

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL CASE NO.
AMD-04-029

WILLIE MITCHELL,
SHELTON HARRIS,
SHELLY WAYNE MARTIN,
SHAWN GARDNER,

Defendants

VOLUME XXII OF XXXVII
Thursday, November 6, 2008
Baltimore, Maryland

Before: Honorable Andre M. Davis, Judge
And a Jury

Appearances:

On Behalf of the Government:
Robert Harding, Esquire
Michael Hanlon, Esquire
On Behalf of Defendant Mitchell:
Laura Kelsey Rhodes, Esquire
Michael E. Lawlor, Esquire
On Behalf of Defendant Harris:
Gerard P. Martin, Esquire
Paul Flannery, Esquire
On Behalf of Defendant Martin:
Thomas L. Crowe, Esquire
James G. Pyne, Esquire
On Behalf of Defendant Gardner:
Adam H. Kurland, Esquire
Barry Coburn, Esquire

Reported by:
Mary M. Zajac, RPR
Room 5515, U.S. Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

1 (Proceedings at 9:38 a.m.)

2 THE COURT: We ready to proceed?

3 MR. HARDING: Yes.

4 THE COURT: Mr. Harding, I got an email from Ms.
5 Sovich, which I responded to. Have you had any contact this
6 morning?

7 MR. HARDING: Actually, TFO Benson is up there with her
8 right now looking for the tape.

9 THE COURT: Great. All right. If we can get Agent
10 Ellington back. You expect to finish today?

11 MR. HARDING: Yes, Your Honor.

12 THE COURT: Okay. Good. Chemist is here?

13 MR. HARDING: Yes, Your Honor.

14 THE COURT: All's right with the world. You okay, Mr.
15 Coburn?

16 MR. COBURN: Yes, sir.

17 (Witness enters the courtroom.)

18 (Jury enters the courtroom.)

19 THE COURT: Good morning, ladies and gentlemen. Ready
20 to continue. Agent Ellington, make yourself comfortable. You
21 remain under oath, of course.

22 THE WITNESS: Thank you.

23 CROSS EXAMINATION

24 BY MS. RHODES:

25 Q Good morning, Agent Ellington.

1 A Good morning.

2 Q You mentioned yesterday that members of a group who were
3 running drugs have to be able to protect themselves at all times.
4 So if somebody is going to a, to try to make a sale to somebody,
5 a quantity of weight for the first time, they're going to have to
6 be a little extra careful, is that right?

7 A Yes.

8 Q And they would want to take some kind of protection with
9 them, is that right?

10 A Yes.

11 Q And normally that would be a gun?

12 A Yes.

13 Q And if one person -- and is it common for them to go two
14 together to do something like that?

15 A It varies. Sometimes they'll take two. Sometimes it might
16 just be one, depending on how the organization is structured.

17 Q So, but in any event, one of them would have a gun if it's
18 just one person, or if it's two, one of them?

19 A It could possibly be. Sometimes they'll have a gun in close
20 proximity, depending on where it's taking place. If it's in a
21 vehicle or in a house, you know, where it is. But generally,
22 sometimes they'll have, it's not, you know, a rule that they must
23 have it, obviously. But depending on the threat level, I think,
24 would also determine whether or not they're going, they're going
25 to believe that they need to have a firearm in close proximity.

1 Q Well, in terms of going to somebody that they haven't dealt
2 with before, that would be a situation more likely they would
3 have a gun then?

4 A They may possibly, yes.

5 Q But wouldn't it be more likely than not that they would?

6 A I think there's a lot of situations, like the comfort level
7 of who they're dealing with. How they, how they know the person
8 that they're doing the deal with in terms of what the risk level
9 is. If it's somebody that perhaps was introduced from another
10 individual that they feel comfortable with and what that threat
11 level would be. I don't think every time that they're going to
12 meet somebody new that they're going to have a weapon. I don't
13 think it's accurate to say that. I think it depends on the
14 threat level of the individual that they're meeting with.

15 Q Okay. And what about where somebody has the role of being,
16 of protecting somebody in the organization or on that particular
17 trip? Normally, part of their role would include, the protection
18 would include having a gun, right?

19 A Yes.

20 Q You also mentioned that a connect, somebody, their source is
21 pretty important to a group, right?

22 A Yes.

23 Q And that's somebody that you would, you would not want to
24 alienate the connect because that's basically your bread and
25 butter, right?

1 A Yes.

2 Q And if you lose that, if you lose your connect you're out of
3 business?

4 A Often times what we see is people will have multiple sources
5 of supply because often times if a certain source of supply has
6 difficulty obtaining the drugs and they have to go to their
7 alternate source to keep things going.

8 So it's not unusual for an organization to have, you
9 know, several different sources of supply. There's a lot of
10 variables. There are two, supply and demand, prices, things like
11 that could also drive a particular individual to another source.
12 If you're dealing with source of Supply A and another source of
13 Supply B has a better price, you may go to that source of supply
14 instead of going to your normal source of supply.

15 Q Okay. But all this would assume, I mean, in any event, you
16 still would not want to alienate your connect, I assume, right?

17 A That's correct.

18 Q All right. Have you ever heard of the Mitchell organization
19 in Baltimore City?

20 A No.

21 Q So to clarify some of the things you were saying yesterday
22 about the characteristics of a group that might be dealing drugs.
23 They could have many members or they could have few, is that
24 right?

25 A That's correct.

1 Q Okay. They could have members that change or they could
2 have a stable crew?

3 A That's correct.

4 Q They could, the organization could be big or it could be
5 small?

6 A That's correct.

7 Q It could have, the product could be a brand or, say, a color
8 or it could not be branded at all?

9 A That's correct.

10 Q In terms of the structure, it could be formal, it could be
11 casual?

12 A That's correct.

13 Q In terms of the name, there could be a name, and there could
14 not be?

15 A That's correct.

16 Q And when a name is used, often it's something that the
17 police identify them by or the police give them a name in order
18 to do what they're doing?

19 A Sometimes it can be a geographical name that is given by the
20 individuals. Sometimes customers will give the name. Sometimes
21 just the location of where they're dealing is what drives a name.
22 It's not always something that we give them. It's kind of,
23 sometimes that happens. But other times it might be the product
24 itself that, you know, where the name derives from. It could be
25 any number of things.

1 Q Okay. So it comes from any number of sources, not
2 necessarily what they call themselves?

3 A Yes, ma'am.

4 Q Okay. And the chain of command in a group that's selling
5 drugs could be strict or it could be loose?

6 A Yes, ma'am.

7 Q Okay. In terms of leadership, you could have one strong
8 leader or you could have multiple people who are important?

9 A That's correct.

10 Q In terms of the duration of a group, you could have an
11 organization that's ongoing or it could be a very brief, a brief
12 connection they have together to sell, is that right?

13 A That's correct.

14 Q You said that when that, a conspiracy could continue after
15 somebody is arrested, is that right?

16 A Yes.

17 Q Because people can sometimes continue to sell drugs or to
18 run an organization from, from jail, is that right?

19 A That's correct.

20 Q And in terms of money, there could be in a group, there
21 could be huge amounts of money involved and there could be sort
22 of insignificant sums, depending on the organization?

23 A That's correct.

24 Q And when the huge sums are involved, that means you often
25 see flashy cars, real estate, condos, all kinds of trappings,

1 fancy jewelry, is that right?

2 A Sometimes. It depends, some of the drug dealers now are a
3 little bit more savvy knowing that if they drive flashy cars and
4 have big homes and, obviously, that will draw more attention by
5 law enforcement.

6 So sometimes, you know, you can have large scale drug
7 dealers that don't have flashy cars that are, you know, a little
8 bit more aware of their surroundings and don't draw that, you
9 know, undue attention to them.

10 Q Well, they're still, in terms of the amount of money, there
11 are some that are dealing in vast sums of money, is that correct?

12 A That's correct.

13 Q And in terms of a group that was doing a little bit of the
14 flashy stuff, would you say the Rice brothers organization was in
15 that category with the cars and the property?

16 A Yes.

17 Q And in terms of the guns, you said you've seen everything
18 from high tech guns to small caliber, old rusty guns?

19 A That's correct.

20 Q And the places they deal in could be one consistent place or
21 several different places, is that right?

22 A Yes.

23 Q Okay. Thank you. Nothing further, Your Honor.

24 CROSS EXAMINATION

25 BY MR. MARTIN:

1 Q Good morning, Agent Ellington.

2 A Good morning.

3 Q Just a couple of questions about some of the things you said
4 yesterday. You were asked, I think, if a drug organization can
5 work in different areas of the city.

6 A Yes.

7 Q Do you remember that? I think it was toward the end of your
8 testimony yesterday. And I wrote your response down. It was
9 that if you have a wholesale operation, then it may have
10 customers throughout the city, correct?

11 A That's correct.

12 Q Okay. And this notion that a drug organization can be run
13 from inside the prison, I think I wrote this down, too. Your
14 answer was, Sometimes an organization can be run from inside if
15 you have a structured organization?

16 A I believe if you have an individual that's locked up that's
17 part of an organization, whether or not it's structured or not
18 structured, if there's a loose organization, the organization can
19 still operate if somebody is locked up inside an institution.

20 Q It's easier if it's a structured organization, isn't it?
21 Because if someone has a lieutenant, he can rely on his
22 outside --

23 A Well, I mean, I would say in my opinion that you could have,
24 you could have two people. You could have one person locked up
25 inside, you could have another person outside, and that

1 organization could still run.

2 Q You said yesterday that a lot of the information that you
3 gathered in your career comes from debriefing confidential
4 informants? You've learned a lot about drug organizations from
5 debriefing confidential informants.

6 A Yes, and my own observations, that's correct.

7 Q That's a significant, not the complete source of your
8 knowledge, but a significant source of your knowledge?

9 A I don't think it would be significant. I think living it
10 and seeing it firsthand has also given me a lot of my basis of
11 knowledge as well.

12 Q It was significant enough for you to mention it in your
13 direct examination, though, wasn't it?

14 A Yes.

15 Q Okay. And you say you got other information over the years.
16 You've learned about drug organizations from monitoring of
17 telephone, monitoring wiretaps?

18 A That's correct. Listening to them.

19 Q So in your experience, then, criminals do talk about their
20 criminal activities over the phone, not always, but they do?

21 A Generally they do. But in those situations, in most,
22 they're almost always encrypted to some extent, meaning that
23 they're not going to, generally over the phone they're not going
24 to say, Bring me two kilograms of cocaine. It's going to be
25 coded and it's up to us to try to break those codes and figure

1 out what they're actually saying.

2 Q Okay. And the organization, the structure of an
3 organization, you said sometimes they can be very structured and
4 sometimes it's just loosey goosey?

5 A Yes, sir.

6 Q I don't have anything further, Your Honor.

7 CROSS EXAMINATION

8 BY MR. CROWE:

9 Q Good morning, Mr. Ellington.

10 A Good morning.

11 Q Do you recall testifying in a case called United States
12 versus Bailey in August of this year?

13 A Yes, I believe so.

14 Q And do you recall at that time that you were offered as an
15 expert on the issue of whether an individual may or may not have
16 acted with intent to distribute drugs?

17 A Was that before --

18 Q Before Judge Bennett.

19 A Yes, sir.

20 Q And do you recall that he found that you were not qualified
21 to testify concerning that?

22 A Yes. I believe it was the intent that was the, Judge
23 Bennett had the problem with.

24 Q So really, you're not qualified to talk about what was going
25 on inside any individual's minds, is that correct?

1 A That's correct.

2 Q Now, my understanding is that you've been attached to
3 something called the REDRUM agent in the Baltimore area between
4 1992 and November of 2002?

5 A That's correct.

6 Q And we've heard from somebody else that that's kind of a
7 catchy word, "murder" spelled backwards?

8 A Yes. Basically, it was an operational name that DEA gave a
9 particular unit that investigated drug-related homicides.

10 Q And that was a unit, was it not, which investigated drug,
11 drug groups or drug organizations which had either committed
12 violence or you thought had potential to commit violence?

13 A Yes, sir.

14 Q Now, the case that you're testifying about today, had you
15 heard about this case before you left the REDRUM unit in November
16 of 2002?

17 A Yes, I believe I did.

18 Q And it first came to your attention because there were a
19 couple of homicides, is that correct?

20 A That's correct.

21 Q And do you know, did you actually participate in that
22 investigation at all?

23 A No, sir.

24 Q Do you know from conversations, either with the U.S.
25 Attorney's office or other law enforcement people or reading

1 reports, what this case is about?

2 A Yes, I do.

3 Q And how did you go about familiarizing yourself about what
4 this, about the case?

5 A Just from hearing conversations from some of the individuals
6 involved. Nothing really firsthand.

7 Q Okay. Did you sit down and read the indictment or discuss
8 what the allegations in the case were with the prosecutors or
9 anybody else?

10 A No, sir, I have not read the indictment.

11 Q Now, Mr. Hanlon, in his questions to you, posed, he posed
12 several questions where he used the word "organization" and you
13 used the word "organization" in your responses. What did you
14 think he meant by that word and what did you mean by that word?

15 A An organization to me is two or more people that operate in
16 concert together to, to, in terms of drug trafficking, to deal
17 drugs.

18 Q Okay. And does it impart to your mind the concept that in
19 some fashion this is organized?

20 A I'm sorry. Can you --

21 Q Does the word "organization" mean to you that something is
22 organized?

23 A Well, I guess in definition it would be, that would be
24 correct. But I think, I think as I testified, you could have a
25 loosely knit organization or you could have a well-defined

1 organization.

2 Q So in essence, when you use the word "organization", it may
3 be something, it may be a group of as little as two people, or
4 really very little that is organized about it, is that right?

5 A Yes, sir.

6 Q Now, would you agree that as a rule, not always, but that as
7 a rule that smaller criminal groups generally have a shorter
8 continuous life than larger criminal groups?

9 A Yes, I would agree with that.

10 Q And is the reason for that, if you have a group of a fairly
11 small number of individuals, say four or five, and all but one or
12 two of them get arrested, that the organization may simply
13 dissolve?

14 A It could possibly dissolve. You know, I guess it depends on
15 how strong, you know, the organization is in terms of, you know,
16 their source of supply and if they're able to stay, you know,
17 keep on going, if individuals have been arrested or removed from
18 the group.

19 Q But the people, people out on the street may well connect
20 with other individuals and start another enterprise that had, had
21 nothing to do with the group that they formerly belonged to, is
22 that right?

23 A Well, I think often times what we see is if you have a
24 group, a group that works together, people may come in, they may
25 come out. Generally, I've had, it's been my experience where

1 I've had investigations where even though they go and they're
2 dealing drugs elsewhere, they still may call individuals for a
3 gun. They still may call individuals for protection, things like
4 that, even though, you know, it may appear that they're, you
5 know, involved with another organization.

6 Q But you're talking about something which is more of a
7 catch-as-catch-can proposition, is that right?

8 A Yes, I would say that's correct.

9 Q And when a significant number of people in a group are in
10 jail and they get out, they may come back and join the people
11 they were formerly associated with and they may not, is that
12 right?

13 A Yes.

14 Q And the group may re-form or it may not re-form at all, is
15 that right?

16 A Yes.

17 Q But in those situations, there may be a gap in time, is it
18 not correct, where the group doesn't really have a continuous
19 period of existence, it kind of winks out of existence and then
20 they come back?

21 A That could be, yes.

22 Q Now, do you agree that the source of supply for small
23 organizations is usually somebody outside the group or the
24 organization?

25 A Well, if they're the source, they would be within the

1 organization, if they're the source.

2 Q Always?

3 A Well, they could go to an alternative source of supply, just
4 as I explained a little bit ago. But I would say that if the
5 source of supply supplying that organization, then even if it's a
6 small one, they're still within that organization. They're the
7 source for that organization.

8 Q Are larger groups, more organized groups, more likely to
9 have a name?

10 A I've seen large organizations that don't have a name. I
11 don't know. Often times a name is associated sometimes with the
12 drug or with the area that they're dealing. So I would say not
13 always. In other words, a large organization doesn't have to
14 have a name.

15 Q My question was, would larger groups be more likely to have
16 a name?

17 A Yes.

18 Q Would they be more likely to have initiations or tests for
19 entry into the group?

20 A No, I don't think I would agree with that.

21 Q Would they be more likely to have a hierarchy or a formal
22 structure?

23 A Yes.

24 Q Would they be more likely to assign names to their
25 individual members themselves?

1 A Can you clarify that a little bit? I mean, what kind of
2 names? Like street names?

3 Q Like street names.

4 A Often times people have street names that aren't even in
5 organizations. Street names are very common in Baltimore.

6 Q But would larger groups be more likely to assign their own
7 names to individuals?

8 A No.

9 Q For their own purposes?

10 A I don't believe so.

11 Q Would they be more likely to keep lists of members and
12 things of that nature?

13 A No.

14 Q Would they be more likely to require dues or monetary
15 contributions?

16 A No.

17 Q Would they be more likely to have sort of a central, a
18 central treasury or a central financing?

19 A Generally, large organizations that I've seen sometimes, I
20 mean very large organizations will have individuals responsible
21 for money. And they're generally the people that are responsible
22 for money laundering, things of that nature. Somewhat smaller
23 organizations, more localized organizations, generally aren't
24 going to have somebody designated for that. Often times what we
25 see is we'll have, they may have certain members that are

1 responsible for counting money. Often times girlfriends, things
2 like that, that will count money and help to conceal money and
3 things of that nature.

4 Q And if somebody is -- and would it also be these larger
5 organizations which would be more likely to offer financial
6 support to a member or former member who was imprisoned or in
7 jail?

8 A It's been my experience that, generally, any time somebody
9 gets locked up in jail, other members, doesn't really matter how
10 big the organization, but they're all going to try to provide
11 support to their individual that, you know, provide help and
12 money and that sort of support when somebody has been arrested.

13 Q And generally, in that situation, somebody who is sitting in
14 jail knows that when he comes out he can go back into the, into
15 the continuing organization, is that right?

16 A Yes.

17 Q Thank you.

18 CROSS EXAMINATION

19 BY MR. COBURN:

20 Q Agent Ellington, good morning. I'm going to try to stick
21 with the word "group" because that was the word that Mr. Hanlon
22 was mostly using when he was examining you yesterday. So we're
23 talk, you understand the term that we're using that to be drug
24 group. That was what you're, I think, speaking to Mr. Hanlon
25 about. Does that sound like a term you're familiar with, drug

1 group?

2 A Group, organization, I think, you know. To me that would
3 all kind of be the same.

4 Q Do you see those two words as being essentially the same,
5 group, drug group versus drug organization?

6 A Yes.

7 Q Okay. When we use either of those terms, then, group or
8 organization, in association with the word "drugs", do you
9 understand us to be talking about some kind of a commercial
10 entity that has a life over a certain time period?

11 A Yes, I would say that's correct.

12 Q It's not just, I mean, if there are two people who don't
13 know each other selling drugs on the street, the streets of
14 Baltimore, there's no reason to believe they're part of the same
15 drug organization or drug group just from that, correct?

16 A Well, I mean, I think you could have, there could be a
17 situation where you have as a source of supply who's running a
18 particular area. Okay. The source of supply is responsible for
19 distributing, let's say, crack cocaine to a particular housing
20 project. You may have someone that's dealing drugs on one side
21 of the housing project that doesn't know the person on the other
22 side but they're all part of that same organization because
23 they're being supplied by the same person at the top.

24 Q Okay. So that's one --

25 A It could be conceivable that they may not know each other

1 but they're all part of that same group.

2 Q Okay. So that's one possibility then?

3 A Yes, sir.

4 Q What if you have two people who are selling drugs in
5 different locations on the streets of Baltimore, who don't know
6 each other and are buying drugs from different suppliers? Is
7 there any reason to believe that those two people are part of a
8 drug group or drug organization, just from what I told you?

9 A Well, it's been my experience where I've had investigations
10 where, one in particular, we had an investigation in a housing
11 project area where the individuals were all, all brought their
12 drugs. There were different drugs from different people. They
13 all came together. And their only thing, the only thing that
14 connected them was they provided protection to each other because
15 they were a group that knew each other, even though their drugs
16 were different, they were selling different drugs. They came
17 into the area together. They provided protection for each other.
18 They brought weapons in together and they would hand the weapons
19 back and forth.

20 Q Okay. That's actually not part of my hypothetical, though.

21 A Okay.

22 Q What I'm asking you is, let's say you've got Person A who's
23 selling drugs on the west side of Baltimore.

24 A Yes. Okay.

25 Q Okay. And he's buying drugs from Supplier B. And then

1 you've got Person C who's selling a different drug in the south
2 part of Baltimore and he or she is buying drugs from Supplier D.
3 They don't know each other, they're not buying from the same
4 supplier, they're not buying the same drug. They're just selling
5 drugs on different parts of the, in different parts of the city
6 of Baltimore on different streets. They don't come together for
7 protection. They don't share guns. They're just selling drugs
8 in different places. Is there any reason to believe they're part
9 of a drug group?

10 A No. I would say no.

11 Q Okay. I mean, they're just two individuals engaged in
12 similar commercial activities in different places, right?

13 A That's correct.

14 Q I mean, you know, if you have a real estate agent who's
15 buying and selling real estate, and then you've got another real
16 estate agent in a different company who's buying or selling real
17 estate, that doesn't mean they're part of the same company.
18 They're just in the same line of business, right?

19 A That's right, yes.

20 Q So then let's say you take the same hypothetical I just
21 posed to you but the two people know each other. They went to
22 school together. Are they part of the same drug organization
23 because of that?

24 A Well, if they're not involved in, as I said, providing any
25 other assistance to each other, I would say no.

1 Q Okay. Let me focus on that phrase -- if they're not
2 involved in providing any other assistance to each other. So is
3 that sort of a, is that kind of a defining characteristics here,
4 then? If you have people that are sort of, there has to be some
5 kind of interdependence either in terms of supply or sharing
6 profit or protecting each other, something like that? Does that
7 help in your mind to define whether people are part of a group or
8 just operating on their own?

9 A I would say yes. I mean, I refer back to the investigation
10 that I've stated earlier. In that situation, it appeared that
11 there were several individuals operating independently but they
12 actually, you know, they came into the project together. They
13 were all selling their own drugs. But their common bond was that
14 they were, they would provide protection for each other because
15 they knew each other. And that was their, that's how they
16 operated.

17 Q So then let's say you have the same two people that I was
18 posing the hypothetical to you about a minute ago. They're
19 selling in different parts of the city. They know each other.
20 In fact, they're friends. They've been friends for a long time.
21 But they don't protect each other necessarily. They don't share
22 profits. They don't buy from the same supplier. Are they part
23 of the same group just because they're friends?

24 A Just because they are friends? I would say no.

25 Q Okay. Now, what if you have a situation in which there are

1 two individuals, and they're both selling the same drug and
2 they're selling it right across the street from each other.
3 You've got one person, you know, selling, let's say, heroin on
4 one side of the street. And you've got another person selling
5 heroin on the other side of the street. But they don't know each
6 other. They don't even like each other. They're not sharing
7 profits. They're not protecting each other. They're not buying
8 from the same supplier. Are they part of the same group?

9 A I would say no.

10 Q They're competitors, typically, right?

11 A Yes.

12 Q What, then, about a situation in which an individual is
13 buying drugs from a supplier, right? And I think we've heard the
14 term "connect", right? That's a term you're familiar with?

15 A Yes, I am.

16 Q Okay. You have Person A who's buying drugs from a connect
17 and that's just a relationship that's endured over a certain time
18 period. A year, couple of years, right? Just a sort of a
19 continuous connection. Are they, because of that commercial
20 relationship, because that person is buying drugs from a connect
21 and the connect is, let's say, selling drugs to a dozen or dozens
22 of other people elsewhere, are the buyer and the seller part of a
23 group in your mind?

24 A Yes, I believe they're loosely connected.

25 Q Loosely connected?

1 A Yes.

2 Q So according to the way you define the word "group", and
3 this is what I'm trying to get at here, even if these people have
4 nothing but this buyer/seller commercial relationship, even if
5 they don't protect each other, share profits, it's just like an
6 arm's length thing. Just as if I were to walk into a 7-Eleven
7 and I go into the same 7-Eleven every morning and I buy a Big
8 Gulp or something like that, right? In terms of the way you
9 define "group", that buyer and that seller are part of a group?

10 A Yes.

11 Q Okay. What if there's somebody out there who sells guns,
12 okay? And obviously, we're talking about an illicit market for
13 guns, not a licensed gun supplier. Somebody who sells them on
14 the street. And Person A buys a gun. This is a one time
15 transaction. Person A buys a gun for protection from that
16 person. And then Person B, a month later or a year later, buys
17 another gun, different kind of gun from the same person. Are
18 Person A, Person B, and the gun seller, are they all part of the
19 same group?

20 A In my eyes they are because you have that same line of, of
21 distribution that's going on there.

22 Q So even if we're talking about one, a one time transaction.
23 Let's say these people really don't even know each other. Person
24 A doesn't know Person B from a hole in the wall. They've never
25 met. And Person A isn't acquainted or friends or has any

1 continuing relationship with the gun supplier. And Person B
2 doesn't either. But just at different times they each buy a gun
3 from that gun supplier to use for protection as part of the drug
4 racket. They're all part of the same group in terms of the way
5 you think about it?

6 A I mean, that's a little bit, it's not as, in my eyes it's
7 not as clear as the drug distribution. But in my opinion, it's
8 still, you have a central source of supply that's dealing these,
9 these other people, which is all part of the same group, yes.

10 Q What about if you have two people, Person A and Person B,
11 and they, in fact, are working together in the sense of kind of
12 repeatedly buying, they go, they make purchases of drugs
13 together. They buy drugs together and they split them or, you
14 know, one sells them to the other or something routinely. I'm
15 assuming that in terms of the way you define it, those people are
16 part of a drug group?

17 A Yes.

18 Q And let's say there's evidence that that happened, just
19 hypothetically, from 1992 to 1996 but there's no evidence that
20 they ever did that again after, say, let's say, 1998. Do you
21 conclude that they're still part of that drug group in the year
22 2000?

23 A Well, I believe that, I think, as I testified earlier,
24 people can kind of come in and out of an organization, a group.
25 And while their relationship ended in 1996, I think it could, you

1 know, once again resume back in 2000.

2 Q Okay. It could --

3 A They could come back into that, they could come, while they
4 left, while they've left that organization, I believe that they
5 could come back into it.

6 Q Exactly. They could have left, they could have come back
7 into it, or they could have not, right?

8 A That's correct.

9 Q Okay. Let's say that you have two people, hypothetically,
10 two individuals who reside in the inner city, in the streets of
11 Baltimore, and they discover independently of one another that,
12 as you told the jury yesterday, the profits that can be made from
13 selling drugs in a small town in Pennsylvania are greater than
14 you can make selling them in, I think you might have referred to
15 Baltimore as like a secondary consumer city?

16 A Yeah. What I would mean by that is the price, the overall
17 price, the supply and demand could be higher. My example of that
18 would be often times what we see in Baltimore City here, you
19 could buy a vial of crack cocaine for \$10 and you could take that
20 same vial of crack cocaine out into Baltimore County or Carroll
21 County or to the more remote areas and you could charge \$20 for
22 that same vial.

23 So it would be similar. I don't know when we're
24 talking about profits, I mean, I think the profits, the profits
25 are going to be the same anywhere you're selling them. But the

1 price that you can actually sell the drugs for would be higher in
2 smaller, rural areas.

3 Q Well, let's say you have two people, both of whom are in the
4 drug trade, but there's no evidence that they've ever sold drugs
5 together or even bought from the same supplier. They both happen
6 to know each other and they're both, you know, in the business,
7 right? And they both independently discover that, you know, you
8 can sell a vial of, whatever, right, crack or heroin or something
9 like that, for a certain price on the streets of Baltimore. And
10 I assume it's cheaper in like a primary supply city like Houston
11 or New York. But then if you go up to Altoona, Pennsylvania, or
12 you go to Lancaster, Pennsylvania -- by the way, you don't have
13 any idea how close Altoona and Lancaster are to each other?

14 A No, I don't.

15 Q If you go up to some place like that and try and sell a
16 drug, you can make more money?

17 A Yes.

18 Q Presumably because there's less supply?

19 A Right. Correct.

20 Q And they discover this independently of one another. You
21 follow?

22 A Yes.

23 Q They don't work together on the streets of Baltimore. They
24 don't buy drugs together. At least they don't buy them in any
25 routine way together in Baltimore. But they independently

1 discover you can make more money up in Pennsylvania. Does that
2 mean they're part of the same drug group in your mind?

3 A No. I mean, I would think, I think to some degree that's
4 pretty much common knowledge in the drug world about how the
5 smaller areas you get, how you will be able to drive the price
6 up. You know, the more rural.

7 Q Let's say you have a group of eight people who know each
8 other because they grew up in the same area, and two of those
9 people decide that they're going to commit a robbery, and during
10 the course of that robbery they're going to be perfectly willing
11 to kill somebody if it becomes necessary in their view to do so.
12 And there's no evidence to suggest that the profits, if any, from
13 the robbery are going to be shared with any one of those other
14 eight people, the other six people. It's a group of eight,
15 right? Two people decide to do a robbery. There's no evidence
16 to believe they're going to share the profits with the other six
17 or that there's going to be any sort of protection for the two
18 doing the robbery or anything like that. It's just two people
19 kind of going off, doing something that they plan to do together.
20 Does that mean that this is an act of the group in your mind?

21 A Did the other six people know they were going to do the
22 robbery?

23 Q They didn't even know about it, or there's no evidence that
24 that they do.

25 A I would say no.

1 Q Let's say you have a group of people that are charged
2 together in a case and they're looking forward to, there's a
3 trial date in the future. And there's a particular type of
4 criminal defense which was originated by a group of people in a
5 totally different geographic area of the country, from a
6 completely different demographic background, and that this
7 particular kind of criminal defense has been utilized repeatedly
8 by other individuals in all, lots of different jurisdictions
9 throughout the United States in terms of, you know, trying to
10 defend themselves against criminal charges.

11 And then you have a group of, let's say, four
12 particular people in one particular city who use the same defense
13 that's been utilized, let's say, by numerous other people in, you
14 know, various other places around the country.

15 Does that mean that everyone who's ever used that
16 defense is part of a criminal organization or a drug organization
17 in your mind?

18 A I would say no.

19 Q May I have the Court's indulgence just for a moment?

20 THE COURT: Yes.

21 Q Thank you very much, Your Honor. Nothing further.

22 REDIRECT EXAMINATION

23 BY MR. HANLON:

24 Q Special Agent Ellington, good morning.

25 A Good morning.

1 Q You were posed a number of hypothetical scenarios by Mr.
2 Coburn. I'm not going to pose that many but I do want to ask you
3 about one hypothetical, picking up on Mr. Coburn's last question
4 dealing with the criminal defense hypothetical.

5 You indicated that everyone in the nation asserting a
6 particular defense wouldn't necessarily be part of the same drug
7 group, is that correct?

8 A That's correct.

9 Q Let me pose you another hypothetical. Suppose you have four
10 defendants charged together in a single case. One day in court
11 without notice they all stand up, reading verbatim from the same
12 script, announcing their refusal to participate in court
13 proceedings. They refuse to answer the Court's questions and are
14 so disruptive that they have to be taken out of the court. Each
15 one of them recites the exact same language word for word or
16 nearly word for word. Would you consider that to be evidence of
17 concerted attempt to obstruct justice in their case?

18 MR. COBURN: Objection. Ultimate issue.

19 MS. RHODES: Objection.

20 MR. CROWE: Also on intent.

21 THE COURT: I think you opened the door, Mr. Coburn.
22 Objection's overruled.

23 A I would say yes.

24 Q Now, with respect to the other hypotheticals that Mr. Coburn
25 asked you, I'm not going to pose each one to you. But let me ask

1 you about them globally.

2 Two people or more than two people come up on the radar
3 screen of your agency, an investigation of yours. And for
4 whatever reason, you want to investigate the possibility that
5 they're a member of same drug group.

6 I would like to ask you a few questions about the
7 things you would investigate. I'm not going to give you
8 hypotheticals but I just want to ask you about some of the things
9 you would investigate.

10 First of all, you would need more information just than
11 the fact that they're two drug dealers, is that right?

12 A Yes.

13 Q Would you look into the fact about, just as a factor, would
14 you explore whether they knew each other socially or grew up
15 together?

16 A Yes.

17 Q Would you look into the fact that they were both drug
18 dealers at the street level?

19 A Yes.

20 Q Would you explore the possibility that they had been
21 arrested together in the past with guns, drugs, money, or a
22 combination?

23 A Yes.

24 Q Would you look into evidence about whether or not there were
25 any firearms exchanged between or among the members of the group

1 you're investigating?

2 A Yes.

3 Q Would you look into any evidence? I'm not going to throw
4 hypotheticals at you. But any evidence that there was any
5 involvement by these people in murders or related murders? You
6 would explore that?

7 A Yes.

8 Q How about getting money together by one person in order to
9 get a lawyer for another person? Is that something you would
10 look into?

11 A Yes.

12 Q You mentioned, in response to questions by Mr. Coburn and
13 also, I think, by Mr. Crowe, you were asked about your
14 understanding of the term "organization." I think you were asked
15 about my understanding of the term "organization." Leave mine
16 aside. My understanding doesn't count.

17 With respect to your understanding of a drug group or
18 drug organization, I believe you testified that you've
19 investigated some groups where the only connection was that they
20 were available to one another for protection, is that correct?

21 A That's correct.

22 MR. CROWE: Objection.

23 THE COURT: Overruled.

24 Q You were asked questions -- I'm forgetting which of my
25 defense colleagues asked you this question. But you were asked

1 some questions about people getting locked up or going to jail
2 and remaining part of a conspiracy. I believe you may have
3 testified to this on cross already. Even in instances where
4 people do leave a conspiracy or are absent from a conspiracy's
5 activities or from a group's activities, have you seen cases
6 where a person gets locked up and resumes activity in the
7 conspiracy after being released?

8 A Yes.

9 Q So you can come back and sort of pick up where you left off
10 in the drug world, is that correct?

11 A That's correct.

12 Q You were asked some questions about the Bailey case before
13 Judge Bennett recently. I was not the prosecutor on that case,
14 is that right? So I don't know the answer to these questions.

15 A No, you weren't.

16 Q Were you qualified at all in that case or was it just the
17 particular area where Judge Bennett didn't want to hear testimony
18 about a defendant's intent?

19 A Yes, I was qualified as an expert. It was just the, the
20 verbiage of "intent to distribute."

21 Q So there was that one point that the judge didn't want to
22 hear the testimony about?

23 A Yes. The intent.

24 Q Of a particular defendant?

25 A Exactly.

1 Q As opposed to the operations of drug groups and
2 organizations in general?

3 A Right. I was qualified in that area.

4 Q Did you testify about those matters in that case?

5 A Yes, I did.

6 Q You were asked some questions about some of the large
7 organizations. When you get to large organizations sometimes
8 they names, sometimes they have hierarchies, things like that.

9 Let me ask you about specifically the Bloods and the
10 Crips, a group that most people have heard of. You've heard of
11 those two organizations?

12 A Yes, I have.

13 Q They're pretty well known. They have colors and histories
14 and all that kind of stuff?

15 A Yes.

16 Q In terms of the activities of the Bloods as they operate
17 here in Baltimore, is it correct that even within Baltimore, and
18 even within the Bloods umbrella, there are numerous smaller sets
19 that operate independently of one another and have their own
20 groups, their own activities separate from the overall umbrella?

21 A Yes, they do.

22 Q Thank you, Special Agent. Thank you, Your Honor.

23 THE COURT: Agent Ellington, thank you very much, sir.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: You're excused.

1 MR. HANLON: Your Honor, the United States calls
2 Special Agent --

3 MR. HARDING: Brief interruption, Your Honor. Can I
4 call, United States will call Vonzella Johnson.

5 THE COURT: All right. Members of the jury, this next
6 witness will be testifying concerning certain laboratory
7 analyses. My understanding is that the government and the
8 defense have reached a stipulation as to most of the other
9 laboratory analyses that are of pertinence to this case.
10 However, there will be limited testimony here as to one
11 laboratory analysis.

12 Good morning, Ms. Johnson.

13 THE WITNESS: Good morning.

14 VONZELLA JOHNSON, GOVERNMENT'S WITNESS, SWORN

15 THE WITNESS: I do.

16 THE CLERK: Be seated. Speak directly toward the mike
17 and state your name and spell it for the record.

18 THE WITNESS: Vonzella Johnson. V-O-N-Z-E-L-L-A.
19 J-O-H-N-S-O-N.

20 DIRECT EXAMINATION

21 BY MR. HARDING:

22 Q Good morning, Ms. Johnson.

23 A Good morning.

24 Q Can you tell us how you're employed?

25 A I'm employed by the Maryland State Police Forensic Sciences

1 Division as a forensic chemist.

2 Q And how long have you been employed there as a forensic
3 chemist?

4 A I've been employed for a little over 16 years.

5 Q Your Honor, I believe that we have a stipulation as to the
6 expertise of this particular witness in the area of analysis of,
7 chemical analysis of controlled substances.

8 THE COURT: Very well. The witness will be accepted an
9 expert in that field.

10 Q Ms. Johnson, I have here an exhibit that is actually marked
11 as Government Exhibit L-11. Do you recognize this document
12 that's on your screen in front of you?

13 A Yes, I do.

14 Q Were you asked to do a chemical analysis of an off white
15 rock substance submitted by Trooper R. Bond, the arresting
16 officer's who is named on here, for a date of offense of 5/7/99,
17 suspect's name is -- my machine seems to have frozen up here,
18 Your Honor. I'm going to have to toggle it. Of course, the
19 first problem is opening this cabinet.

20 THE COURT: The other monitors seem to be fine.

21 MR. COBURN: Ours is fine.

22 THE COURT: Is it the monitor or is it -- you're not
23 getting a picture of it. Oh, I see.

24 MR. HARDING: Magic.

25 THE COURT: Just before you said that, the word "freeze

1 frame" came up on the monitor. Perhaps, I think there's a
2 control there that needs to be disabled.

3 MR. HARDING: Sorry, Your Honor.

4 THE COURT: That's all right. Mr. Hanlon fixed it.

5 MR. HANLON: No, Mr. Hanlon hasn't done anything, for
6 the record, Your Honor.

7 THE COURT: Perhaps you should power it off and power
8 it back up.

9 BY MR. HARDING:

10 Q Actually, I just toggled it off to try to do that, Your
11 Honor. Judge, why don't I just try to do with the testimony
12 without worrying about all this.

13 THE COURT: Okay.

14 Q So back to my question, Ms. Johnson. Were you asked to do a
15 chemical analysis of a bag submitted by Trooper Raymond Bond on
16 an offense of May 7th, 1999, suspect's name is Shelly Wayne
17 Martin. And can you read for us the Crime Lab file number and
18 the property number that appear on the report?

19 A Yes, the Crime Lab file number is CL 024230.

20 Q Okay. And what did the exhibit consist of when it was
21 submitted to you?

22 A It consisted of a plastic bag that contained two individual
23 plastic bags, each containing a white substance.

24 Q Okay. And first of all, did you weigh the substance and
25 determine what it was?

1 A Yes.

2 Q Can you tell us the weight that you determined and also the
3 result of your analysis?

4 A I weighed the two plastic bags, plastics bags individually.
5 The first one weighed a gross weight of 41.3 grams. The second
6 one a gross weight of 11.8 grams.

7 Q Okay. And what was the result of your analysis?

8 A On Item Number One, it was cocaine base, 44%. Item Number
9 Two was cocaine base.

10 Q And that's the same thing as crack, is it not?

11 A Yes.

12 Q Okay. Now, if you added up the gross weights of those two
13 bags, what would the, what would the sum be?

14 A 53.1 grams.

15 Q Okay. And when you say gross weight, does that include the
16 weight of the little baggies?

17 A Yes, it does.

18 Q Can you estimate the net weight, if you submit, if you just
19 wanted to know how much cocaine base there was in the two bags --

20 MR. PYNE: Objection.

21 Q -- can you do that?

22 THE COURT: Overruled. You may answer.

23 A Yes. The bags, based on the description that I have,
24 estimate, estimate weight is 1.4 grams for each bag. So the
25 total net weight would be an estimate of 50.3 grams.

1 Q Meaning you deducted 2.8, the weight of the two bags, from
2 the 53.1, and came up with 50.3 grams, is that correct?

3 A Yes. That's correct.

4 Q So that's the total weight of the crack or cocaine base in
5 the exhibit, is that correct?

6 A Correct.

7 Q All right. Thank you. I don't believe I have any more
8 questions.

9 THE COURT: Mr. Pyne, if you'll wait just one second.

10 MR. PYNE: I would love to, Your Honor.

11 THE COURT: I think Louis might be able to help us out.
12 It froze. Thank you very much, Louis.

13 CROSS EXAMINATION

14 BY MR. PYNE:

15 Q Good morning, Ms. Johnson.

16 A Good morning.

17 Q I'm Jim Pyne. I represent Shelly Wayne Martin. How long
18 have you been with the Maryland State Police Crime Lab?

19 A A little over 16 years.

20 Q And so you're very familiar with this form here that's on
21 the DOAR presenter?

22 A Yes, I am.

23 Q And can you tell the ladies and gentlemen of the jury why
24 all these signatures and dates and times appear on the bottom?

25 A The signatures at the bottom are what we call the chain of

1 custody. And they represent each person who has handled the
2 evidence.

3 Q And why are those included on this form?

4 A To show a trail of who's handled the evidence.

5 Q Okay. Because this is what's called fungible evidence,
6 isn't that correct? There's no way you can identify one baggie
7 of white powder from another baggie of white powder. So you need
8 a chain of custody to show that this particular baggie of powder
9 is the one that Trooper Bond submitted to you, is that correct?

10 A Correct.

11 Q So it's very important that anyone that handles this signs
12 off that they're taking it out and it's signed in wherever it's
13 delivered to, is that correct?

14 A Correct.

15 Q And in fact, your name appears, I think, down here?

16 A Yes.

17 Q Ms. Johnson. You took it out, it looks like, August 17th,
18 is that right, of '99?

19 A I can't see the date.

20 Q You probably have the monitor that's off a little bit.

21 A August the 17th, 1999.

22 Q Okay. And you signed that out of, what, a vault that you
23 keep these drugs in?

24 A The CDS vault at the Maryland State Police Forensic Sciences
25 Division.

1 Q Okay. What's the first thing you do when you take things
2 out of the vault to analyze them?

3 A The first thing, well, when we take them out of the vault,
4 we take them back to our lab area and lock them up until we're
5 ready to analyze them.

6 Q Okay. When you're ready to analyze it, then, what's the
7 first thing you do?

8 A When I'm ready to analyze it, what I would do is take it
9 out. The piece of paper that you're showing here is a chain of
10 custody, would be attached to the evidence envelope. I compare
11 the information on the chain of custody, the description, as much
12 as I can before opening it. And then I proceed to open it and
13 remove the items for analysis.

14 Q Okay. So you don't fill out this typed information here?
15 This one plastic baggie containing an off white rock substance?

16 A No.

17 Q You don't fill that out?

18 A No. That's completed when I receive it.

19 Q Okay. So that probably would have been completed by Trooper
20 Bond in this case, is that correct?

21 A I don't know who completed it. I can assume that he did
22 because his name is on it, but I don't know.

23 Q Since he is on the chain of custody at number two, Trooper
24 R. Bond, he is the first date, 5/7/99 at 1504, would that in all
25 likelihood be the person who packaged this and submitted this to

1 you?

2 A In all likelihood it would be.

3 Q Okay. So he typed out that he was submitting to you one
4 plastic baggie can take an off white rock substance?

5 A Correct.

6 Q And it's your testimony that the first thing you do is take
7 whatever you're given and compare it to what's on that sheet?

8 A Correct. Before opening the bag.

9 Q So before you ever open the bag, you look to see if there
10 was one plastic baggie containing an off white rock substance in
11 that bag, correct?

12 A Yes.

13 Q And you're telling us today that that's not what you saw in
14 that bag?

15 A Not once I opened it.

16 Q Okay. Once you opened it, there were, in fact, two plastic
17 baggies?

18 A Correct.

19 Q Containing two off white rock, off white rock substances
20 correct?

21 A Correct.

22 Q So didn't that indicate to you that, in fact, that was not
23 what Trooper Bond had submitted?

24 A No. Because we do routinely receive items where the
25 description on the outside appears when you're looking through it

1 to match the description that's on the chain of custody. And we
2 open it up, sometimes there are more in there. We don't see it
3 as a discrepancy.

4 Q Why would that not be a discrepancy? It says one baggie
5 with one rock-like substance? You're analyzing two baggies with
6 two rock-like substances and you don't see a discrepancy?

7 A Because it says one baggie containing white rock-like
8 substance. It doesn't say specifically that it's one bag
9 containing it or two bags.

10 Q Yes, it does. It says one plastic baggie. It does
11 specifically say one plastic baggie.

12 A Correct. One plastic baggie containing off white substance.
13 It doesn't say that it may contain more inside of it. So we
14 don't note it as a discrepancy.

15 Q I missed something. It says one plastic baggie. And you
16 open whatever it's contained in, this evidence envelope, and you
17 find two plastic baggies, and you don't see that as a
18 discrepancy?

19 A Excuse me. No. Because as I said, it says one plastic
20 baggie. When I observed it through the evidence envelope before
21 I opened it and compared it, I saw one plastic bag. Once I
22 opened it, inside of the one plastic bag there were two baggies.
23 We don't, we don't say that that's a discrepancy because we
24 receive items like that all the time. It's not a discrepancy to
25 us.

1 Q Now, let me make it clear. The one plastic baggie you're
2 talking about opening is an evidence bag?

3 A No. I do open the evidence bag, yes. But inside of that
4 there's, there was one plastic bag that, when you opened it, when
5 you separated it, it contained two other plastic bags inside of
6 the one plastic bag.

7 Q Okay. So we're actually talking about three bags, then?

8 A Yes.

9 Q So there's two smaller baggies?

10 A Inside the one.

11 Q In a larger baggie?

12 A Inside of the evidence envelope.

13 Q And you didn't feel that that was important enough to note
14 anywhere in your submission here?

15 A I did note it in my notes.

16 Q Okay. Let's go to your notes, then. And what do you reveal
17 in your notes?

18 A In my notes I have a fold over sandwich bag containing items
19 one and two, which I've described each as a fold over sandwich
20 bag containing white compressed substance.

21 Q Okay. So we're dealing with three bags now, we've made
22 clear.

23 A Yes.

24 Q Three plastic baggies. Did you weigh any of those three
25 plastic bags?

1 A I weighed the two inner bags that I've listed it as items
2 one and two.

3 Q I guess my question wasn't specific enough. Did you
4 separately weigh any of the three plastic bags?

5 A No.

6 Q So you're just guessing what that weight would be?

7 A As I stated before, that's an estimation based on bags that
8 I've weighed previously that are described that way. They
9 normally way around 1.4 grams. So it's an estimation.

10 Q Did you weigh these specific bags?

11 A No.

12 Q Can you weigh these specific bags?

13 A If I had them available, I could, yes.

14 Q Are they available?

15 A I don't see them. I don't know where they are.

16 Q Okay. Do you know if they've been destroyed?

17 A I have no knowledge of what happened to them.

18 Q Okay. So the weight that you give on this form here, the
19 44.3 and the 11.8 include the weight of those baggies?

20 A The 41.3 and the 11.8 include the weight of the bags.

21 Q The 41?

22 A Yes.

23 Q Got to get my reading glasses. And you're just guessing
24 what the weight would be, or estimating, more probably, what the
25 weight would be?

1 A What the estimate of the bags are, yes.

2 Q Okay. You don't know for a fact what that weight is? This
3 is just your best estimate based on your brief description in
4 your notes of the bag?

5 A Correct.

6 Q And that note is one fold over plastic sandwich bag?

7 A Yes.

8 Q No further description than that?

9 A No.

10 Q Okay. Now, on the particular form here, you have gross and
11 net weight, correct?

12 A Yes.

13 Q You did not indicate on there whether this was a gross or
14 net weight, did you?

15 A No, I didn't.

16 Q Wouldn't that be helpful?

17 A At that time, my policy, we did not have to indicate it one
18 way or the other. We could provide the information when asked.
19 So I didn't.

20 Q Well, both in state court and federal court, aren't the
21 weight of drugs very important?

22 A Yes, they are.

23 Q And so these weights you've given here are, in fact, gross
24 weights and not the weight of just the drugs?

25 A That's correct.

1 Q And the weight of drugs, the particular weight of drugs
2 themselves can bring into action mandatory minimum type
3 sentences, aren't you aware of that?

4 A I am aware of that.

5 Q So it's very important to precisely know exactly what the
6 weight of the particular drug is, correct?

7 A Correct.

8 Q And yet the weights you have here include the weight of the
9 baggie?

10 A Yes, it does.

11 Q And in fact, the weights you have here, when added together,
12 would add up to over 50 grams?

13 A That's correct.

14 Q Now, are you aware that 50 grams both I believe in state
15 court and in federal court trigger in certain mandatory minimum
16 penalties?

17 A I aware of that, yes.

18 Q So don't you think it would be very important to weigh those
19 baggies and find out exactly what the weight of this drug is
20 since we're right at that 50 gram limit?

21 A If I had been asked to weigh them, I would have weighed
22 them. But it's policy in our lab that we don't have to separate
23 them out from the containers, that's our standard operating
24 procedure, unless we're requested to do it.

25 Q And you weren't requested to do that in this case?

1 A I wasn't requested, no.

2 Q Now, I see that you did a purity on one of the baggies, is
3 that correct?

4 A Correct.

5 Q And why did you do it on only one of the baggies?

6 A Again, with the purity, also, it's standard operating
7 procedure in our lab. We don't do purities unless someone has
8 requested it. Because I did it on the one, someone requested it
9 at some point that I do it on that particular item. I didn't
10 keep a record of that. We don't do that, either. Usually it's a
11 phone call.

12 Q Okay. And one of the things you rely on in making sure that
13 you're analyzing the right thing is this property number, is that
14 correct? Because that's the number that the trooper submits it
15 under?

16 A That's, that's the number that it is submitted to the lab
17 under, yes.

18 Q And in this case it was P-155715?

19 A P 157 -- 155715.

20 Q Yes. And does the trooper also prepare a property record in
21 regards to the property number?

22 A Yes.

23 Q Now, are you familiar with -- could I approach the witness,
24 Your Honor?

25 THE COURT: Yes.

1 Q Ask that you would look at the property record I've handed
2 you and ask, that's the property record that was prepared in this
3 case?

4 A It does have the same number so I'm assuming that it is the
5 same property record.

6 Q Okay. And did the trooper weigh the substance in this case?

7 A Yes.

8 Q And it's a total weight, meaning including the weight of the
9 three bags, is that correct?

10 A He has total weight. I don't know what he included.

11 Q Okay. Well, he obviously, when he filled this form out,
12 thought it was only one bag, didn't he?

13 A According to what he wrote on here, yes.

14 MR. HARDING: Objection.

15 Q Let me withdraw it and ask another one, Your Honor.

16 THE COURT: Withdrawn.

17 Q He titles it the same way he does here. One plastic bag
18 containing an off white rock substance, is that correct?

19 A Correct.

20 Q And he weighed that one plastic bag at 50.3 grams, did he
21 not?

22 MR. HARDING: Objection.

23 THE COURT: Overruled. You may answer based on the
24 form.

25 A According to the form, yes, 50.3 grams.

1 Q Could I have this marked as --

2 THE COURT: Martin exhibit which?

3 Q Martin's Exhibit 14, Your Honor.

4 THE COURT: Martin Exhibit 14.

5 Q Can I have a moment?

6 THE COURT: Yes.

7 Q I don't think I have any further questions, Your Honor.
8 Thanks.

9 THE COURT: Redirect.

10 MR. COBURN: I just have a couple, Your Honor.

11 THE COURT: I'm sorry, Mr. Coburn.

12 CROSS EXAMINATION

13 BY MR. COBURN:

14 Q Not at all. Ms. Johnson, good morning.

15 A Good morning.

16 Q I just have a couple of questions about the lab analysis
17 itself. So the first baggie, the one that you called Item Number
18 One, you found that to be 41.3 grams, right?

19 A Correct.

20 Q And then next to that it says cocaine base?

21 A Correct.

22 Q That's the same thing as crack, right?

23 A Yes.

24 Q And that's obviously an illegal substance, correct, under --

25 A Yes.

1 Q -- what you call a Schedule Two controlled substance?

2 A Schedule Two, yes.

3 Q Now, when you've got that number 44% next to that?

4 A Um-hum.

5 Q What does that mean?

6 A That's the percent purity for that item. It means that it's
7 44% cocaine base.

8 Q What's the rest of it?

9 A I don't know.

10 Q It's just whatever garbage typically gets mixed in in terms
11 of making it saleable on the street, is that fair to say?

12 A Correct. Cutting agents, sugars, anything.

13 Q Cutting agents. Now, with respect to Item Number Two, the
14 one that's 11.8 grams, when you say that's cocaine base, is that
15 based on the test you did on the first item?

16 A No, that was tested separately.

17 Q So in other words, there's one test you do to see if it is
18 cocaine, if it contains cocaine base. Then there's another kind
19 of test you do to figure out what kind of percentage it is?

20 A The qualitative tests determine what the substance is. And
21 quantitative tests determine the percent purity.

22 Q How do you do that? Without getting into like, I don't mean
23 to take up a lot of the Court's time on this. I mean, the test
24 to determine whether there is cocaine base in there is one kind
25 of test and then there's another perhaps more complicated test to

1 determine the percentage, is that right?

2 A There's a range of tests that we do. There's not just one
3 test. In this instance, I did some presumptive or screening
4 tests, which were color tests. And I did three of those on each
5 sample. I then did a microcrystalline test. And I also did a
6 UV, which is an ultraviolet spectrophotometer. What that is is
7 ultraviolet light passes through a sample and produces a graph.

8 I also did an infrared spectrophotometer. And that
9 gave me the confirmation that the substance was cocaine base.
10 And that's an instrument that uses infrared light to pass through
11 the substance.

12 Q You understand I'm not challenging any of these results.
13 I'm just trying to figure out, there's one test or tests you do
14 to determine that it's cocaine base and there's something else
15 you do to figure out the percentage?

16 A Right. There's another test to determine the percent
17 purity, and that would be the gas chromatograph test.

18 Q And that's the one that you did not do on the second item?

19 A Correct.

20 Q Nothing further. Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. HARDING:

23 Q Ms. Arrington, do you have Martin Exhibit Number 14?

24 Ms. Johnson, you told us that your estimate of the
25 total weight of the crack, the cocaine base in the exhibit that

1 was submitted by Trooper Bond was 50.3 grams, is that correct?

2 A That's my estimate, yes.

3 Q And is that the exact figure that Trooper Bond put on the
4 report that he submitted to you that's marked Martin Exhibit
5 Number 14?

6 A That also says 50.3 grams.

7 Q Thank you. I have no further questions.

8 THE COURT: Ms. Johnson, thank you very much. You're
9 excused.

10 THE WITNESS: You're welcome.

11 MR. HANLON: Your Honor, the United States calls
12 Special Agent Brian Klas.

13 S.A. BRIAN KLAS, GOVERNMENT'S WITNESS, SWORN

14 THE WITNESS: I do.

15 THE CLERK: Be seated. Speak directly toward the mike.
16 State your name and spell your last name for the record.

17 THE WITNESS: Brian Klas. K-L-A-S.

18 DIRECT EXAMINATION

19 BY MR. HANLON:

20 Q Special Agent Klas, good morning.

21 A Good morning.

22 Q What do you do for a living?

23 A I'm a Special Agent with the Bureau of Alcohol, Tobacco,
24 Firearms and Explosives.

25 THE COURT: You know, I probably should explain --

1 excuse me, Agent -- explain to the jury because the jury's aware
2 that ordinarily persons who have been in the courtroom are not
3 permitted to be witnesses in the case. But there is an exception
4 that permits the government to have its agent in the courtroom
5 throughout the trial, who can then testify. And that's why Agent
6 Klas, though he has been in the courtroom for much of the trial,
7 is permitted to testify.

8 BY MR. HANLON:

9 Q Thank you, Your Honor. You're an ATF agent, Special Agent?

10 A Yes, sir.

11 Q And how many years?

12 A Approximately nine years.

13 Q Just briefly, what kind of a work, what kind of
14 investigations do you do as an ATF agent?

15 A Currently, I'm assigned to the Violent Crime Impact Team.
16 And we work narcotics and violent narcotics traffickers.

17 Q Have you been doing violent, violent crimes work and
18 narcotics work and firearms work for most of your time as an ATF
19 agent?

20 A Most of that. I was an arson investigator prior to joining
21 the group.

22 Q And is the ATF position, is that what you've done in law
23 enforcement? Has there been any other law enforcement experience
24 you've had?

25 A I've also been employed by the Immigration and

1 Naturalization Service, both as an inspector and as a special
2 agent. I've also worked for the city of New York as an
3 investigator as well.

4 Q All in all, not to make you do math, Special Agent Klas, but
5 how many years have you been working in law enforcement?

6 A Approximately 13.

7 Q Now, you've obviously been helping us with this case, is
8 that correct?

9 A Yes.

10 Q Let me ask you, direct your attention to January the 22nd of
11 2004. That was one of the earliest things that you did as part
12 of this investigation, is that right?

13 A Yes, that's right.

14 Q Did you participate in a search warrant that day?

15 A Yes, I did.

16 Q And was the location of that search warrant 2731 Seamon
17 Avenue in Baltimore, Maryland?

18 A Yes, it was.

19 Q I'm going to show you what's been previously marked and
20 entered into evidence, I believe, as Government's Exhibit PH-21.
21 Is that the, is that Seamon Avenue?

22 A Yes, it is.

23 Q And this is the house that you helped search?

24 A That's correct.

25 Q Let me ask you, setting the scene a little bit for the

1 search warrant. Did you have any involvement in the preparation
2 of the search warrant itself or in acquiring the evidence that
3 led to the issuance of a search warrant for this house?

4 A No, I did not.

5 Q You just got involved, essentially, to help out with the
6 actual search?

7 A That's correct.

8 Q In terms of how the search works, are you the only officer
9 that goes or are there multiple officers?

10 A No, there were several officers and agents.

11 Q You get together, you get ready to go, and then you go over
12 as a team?

13 A Yes, correct.

14 Q What was your job sort of going into the house? Did you
15 have a particular assignment?

16 A No, not at this time. My assignment was to help search the
17 premises.

18 Q Were there any incidents or any problems, to your knowledge,
19 getting into the house?

20 A No, there was no problem getting into the house.

21 Q After entry was made, who was involved? Is it ATF agents,
22 police officers?

23 A There was, I think there was a DEA agent there. There was
24 an IRS agent there. Myself and several sworn Baltimore City task
25 force officers.

1 Q Task force officers is a local officer, detective or police
2 officer who is sort of sworn in and attached over to a federal
3 agency?

4 A Exactly. They're assigned to DEA at the time.

5 Q Once law enforcement officers entered the house, to your
6 knowledge a complete search of the house was done, is that right?

7 A That's correct.

8 Q I'm going to ask you about various items in the house. But
9 just to, again, set the scene a little bit. You were not the
10 seizing officer for each and every one of these items, is that
11 right?

12 A No, I was not.

13 Q But you were either the seizing officer or you saw them
14 being seized and in the process of being seized, is that right?

15 A Yes. Categorized.

16 Q So you have some familiarity with the items we're going to
17 go over today?

18 A Yes, I do.

19 Q Setting the scene a little bit inside the house. I'm going
20 to begin by asking you about the kitchen at Seamon Avenue. Can
21 you describe the kitchen?

22 A Well, as soon you walk into that door there, you can see the
23 home goes to the left, and that's where the kitchen is. I recall
24 there's a table near the window there.

25 Q This window here?

1 A Yes. And then the room turns into a, that's basically the
2 end of the kitchen. But it turns, the linoleum floor turns to
3 the right a little bit, like a small part of the shorter end of
4 the L. And there are two closets in that section there, which
5 then leads into the living room.

6 Q So the kitchen leads into the living room?

7 A Yeah.

8 Q And around about where the kitchen leads into the living
9 room, there are two closets?

10 A That's correct.

11 Q Let me ask you about the two closets. Is either one of them
12 near or closer to the kitchen versus the dining room?

13 A Yeah. They're on either side of the wall almost directly
14 offset. But one favors the kitchen by about, oh, I would say a
15 foot or so, and the other favored the living room by, say, a foot
16 or so.

17 Q That kitchen closet was among, I'm going to call the closet
18 closer to the kitchen the kitchen closet?

19 A Yeah.

20 Q You've heard it referred to various ways. Kitchen closet,
21 furnace closet, is that right?

22 A Yes.

23 Q Is there, in fact, some kind of equipment or furnace inside
24 of that closet?

25 A Yeah, I do recall there was.

1 Q Were you present when that closet was first entered by law
2 enforcement?

3 A I believe I was in the, more of the kitchen area. But I was
4 in the proximity.

5 Q Did you have a chance to see the items, if anything was
6 discovered in the kitchen?

7 A Yeah.

8 Q In the kitchen closet. Excuse me.

9 A Yeah. I saw the items before any items were removed.

10 Q Let me show you what's been marked as Government's Exhibit
11 se 4. What do we see in SE-4?

12 A That's the .45 caliber Llama pistol.

13 Q Now, I'm going to show you some of these specific items in a
14 moment. But let me set the scene a little bit. You've referred,
15 obviously, to a .45 caliber Llama pistol?

16 A That's correct.

17 Q There is an object underneath the pistol that I've outlined.
18 What is that object, if you remember?

19 A A black binder. Plastic vinyl binder, I guess.

20 Q When you first, when you looked inside the closet, I gather
21 there were a couple other officers there?

22 A Yeah.

23 Q Was this basically how it looked, the weapon on top of the
24 binder on top of these other things?

25 A Yeah. It was photographed in place. I believe that's

1 exactly how it looked.

2 Q And underneath the binder there's, I'm trying to outline
3 something else that's just under the weapon. What's the white
4 stuff?

5 A Those are papers.

6 Q And then, finally, there is a, I'm outlining here something
7 underneath the papers. Can you tell us what that is?

8 A Well, that's, I believe, if I recall, that's the matrix VHS
9 tape. And it's all contained inside of a black, say, milk crate.

10 Q Plastic black milk crate?

11 A That's correct.

12 Q Let me show you some of these specific items, if I may.
13 Showing you what's been marked as Government's Exhibit SE-1. Can
14 you tell us what SE-1 is?

15 A Yes. That was, that is the .45 caliber Llama that was
16 pictured in the photograph we just saw.

17 Q And this was seized from the closet at Seamon Avenue?

18 A Yes.

19 Q From the kitchen closet, I should say?

20 A Yes.

21 Q What was done with this weapon? Was it, there were a number
22 of agencies. Was this particular weapon put into ATF custody?

23 A Yes, it was.

24 Q Ultimately, on the subject of the gun, you submitted this
25 .45 caliber Llama to your agency for test-firing and analysis, is

1 that right?

2 A Right.

3 Q Was it test-fired?

4 A Yes, it was.

5 Q Was it found to have functioned and to fire as designed?

6 A Yes.

7 Q Specifically, Special Agent Klas, was Government's Exhibit
8 SE-1 capable of expelling a projectile by the action of an
9 explosive?

10 A Yes, it was.

11 Q Attached to Government's Exhibit SE-1, we've been talking
12 about the weapon, there is also this piece of metal, is that
13 correct? It's not showing up great on the screen.

14 A Oh, yes, sir.

15 Q What is that?

16 A That's the magazine.

17 Q Special Agent Klas, was the Llama, do you remember if the
18 Llama was loaded at the time of its recovery?

19 A The Llama had the, the magazine had seven rounds of
20 ammunition inside the magazine and the magazine was seated
21 properly inside of the firearm. There was not a round in the
22 chamber.

23 Q So it was loaded in the magazine but not chambered?

24 A That's correct.

25 Q Was the weapon unloaded and rendered safe when it was

1 seized?

2 A Yes, I did that.

3 Q Government's Exhibit SE-2 is an envelope containing a number
4 of items, is that correct?

5 A Yes.

6 Q And I've removed one of those items. Can you tell us what
7 the envelope marked as Government's Exhibit SE-2 contained?

8 A Yeah. That was one of the, one of the rounds of ammunition
9 recovered from the magazine, the .45 caliber ammunition.

10 Q I don't know if I want to open up this envelope and count.
11 I think you've already indicated how many rounds there were.

12 A There were seven rounds.

13 Q Staying on the kitchen closet for a moment. I want to ask
14 you about this black object that was seized. And let me show you
15 what's been previously marked as Government's Exhibit SE-20.
16 Your Honor, if I may, I would like to use the table.

17 THE COURT: Certainly.

18 Q What is SE-20, Special Agent Klas?

19 A This is the binder that was pictured in the photograph and
20 some of the documents or all the documents that were recovered
21 from inside the binder.

22 Q The documents were inside the binder at the time of the
23 recovery, is that right?

24 A Yes, that's correct.

25 Q You and I, in preparation for your testimony, have actually

1 gone through this binder the last couple of days and have pulled
2 out various samples of this documentation to be discussed later
3 in your testimony, is that right?

4 A That's right.

5 Q So as we sit here today, the binder does not contain all of
6 the documents it originally contained, is that right?

7 A That's correct.

8 Q But just for the jury's reference, there are still a number
9 of documents inside the binder and they were organized more or
10 less along the lines of what we see here, is that right?

11 A Yeah. They were disorganized, I guess you would say.

12 Q I mean organized in the, in the broadest sense of the term?

13 A Yes.

14 Q And we've gone through this and analyzed things and stuff
15 like that, is that correct?

16 A That's correct.

17 Q Picking up just a sample so we can have a sense of how these
18 things are organized. This black binder, for purposes of the
19 drug seizure, DEA agents sort of took custody of some stuff and
20 inventoried and assigned a DEA exhibit number to everything, is
21 that right?

22 A That's correct.

23 Q The black binder, we've called it Government's Exhibit SE-20
24 in this case, but the DEA called it N-45, is that right?

25 A That's right.

1 Q Again, not to throw too many numbers at the ladies and
2 gentlemen of the jury, but each one of the documents found inside
3 the black binder was actually labeled by a DEA agent as N-45, and
4 then a page number was assigned, is that right?

5 A That's correct.

6 Q So every document that has an N-45 indication is a document
7 that came out of the black binder?

8 A Yes.

9 Q Unfortunately does not show up great on the DOAR system and
10 I'm not sure the jury will be able to see it from here. But in
11 Government's Exhibit SE-4, there's a white piece of paper that
12 can be seen, is that correct, Agent?

13 A Yes.

14 Q And you may not be able to see it from your seat, but you've
15 look at it in the past?

16 A Yes.

17 Q And I don't know if the jury can see it. I might ask to
18 publish this briefly, Your Honor. But there's a particular white
19 piece of paper that has some red handwriting on, is that correct?

20 A That's correct.

21 Q Is that one of the documents we're going to discuss later?

22 A Yes.

23 Q Your Honor, may I just briefly show this to the jury?

24 THE COURT: You may. You can hand it over, Mr. Hanlon.

25 Q Thank you, Your Honor. There were also some documents, and

1 I don't know if you have anything in front of you, Special Agent,
2 giving you the DEA numbers, but there are also a number of
3 documents that DEA agents labeled as N-46 for purposes of their
4 inventory, is that right?

5 A That's correct.

6 Q And they were also found in the kitchen closet?

7 A Yes, sir. Yes, sir.

8 Q Not to throw too many numbers at everyone. But Government's
9 Exhibit SE-16 is a packet containing all of the documents taken
10 from the closet which were designated as DEA N-46, is that right?

11 A That's correct.

12 Q And you've gone through this in preparation for your
13 testimony?

14 A Yes, I have.

15 Q Let me just show you a few of these pieces of paper. Your
16 Honor, one of these exhibits, I'm going to attempt to cover up a
17 piece of information on it if that's all right?

18 THE COURT: All right.

19 Q This item from Government's Exhibit 26, 16, SE-16, is a
20 Social Security Card, is that right?

21 A That's correct.

22 Q I'm endeavoring to hide the Social Security number. Just so
23 we can get the name on that card. Can you please read us the
24 name on this Social Security card?

25 A Shelton Harris. I can't seem to make out the middle

1 initial.

2 Q Can you make it out now, Agent?

3 A It might be an L.

4 Q A few other items. Is this a Maryland Department of Health
5 birth certification card?

6 A Yes, sir.

7 Q In the name of Shelton Harris?

8 A Shelton Lee Harris, yes.

9 Q And Your Honor, in the cases of documents with identifying
10 information, I'm sure we can endeavor to make some sort of
11 accommodation.

12 THE COURT: Thank you, Mr. Hanlon, for your sensitivity
13 to that.

14 Q This is another ID card, also in the name of Shelton Harris,
15 is that right?

16 A Yes.

17 Q Also issued by the State of Maryland?

18 A Yes.

19 Q And also from the same exhibit, a couple of pieces of mail
20 in the name of Shelton Harris, in the name of Shelton Harris?

21 A Yes.

22 Q And without going through all of the documents in this
23 packet individually, all of the documents here were documents,
24 the vast majority of which bore the name Shelton Harris, is that
25 right, Special Agent?

1 A That's right.

2 Q And they were found with the black notebook and in the, in
3 proximity to the Llama .45 caliber firearm?

4 A They were found in the same closet.

5 Q Same closet, I should say. The living room of the house was
6 also searched, is that right?

7 A That's correct.

8 Q And you were present for or you participated in that search?

9 A Yes, I was searching the living room.

10 Q There was a few miscellaneous items. There was a camera
11 found during the search of the living room?

12 A Yes, sir. Camera was recovered from the living room.

13 Q There was also a red notebook found, is that right?

14 A That's correct.

15 Q Your Honor, I'm candidly not sure this has been marked as a
16 exhibit or not. I'm going to call it Government's Exhibit SE-47,
17 if I may.

18 THE COURT: All right. SE-47.

19 Q And Special Agent, where I got the number SE-47, I'm going
20 to show you on our evidence presentation system, will be able to
21 get a piece of it. This is a red folder, is that right?

22 A That's correct.

23 Q For DEA purposes, it was inventoried as N-47, is that right?

24 A That's correct.

25 Q So for convenience, I'll call it SE-47 for this case. Is

1 this, did you see this folder that day?

2 A Yes. I saw it.

3 Q And there is some writing on the folder, on the front page
4 of the folder. Can you please read that? And I'll take away my
5 notation.

6 A Shake down. Shake down, that ville.

7 Q And this was written on the front page of the folder at the
8 time of its recovery?

9 A Yes, on the cover of the folder.

10 Q It was already written there when the agents recovered it,
11 is that right?

12 A Yes.

13 Q There was also a black notebook which I will call
14 Government's Exhibit 47-1 for this case. That was also recovered
15 and put into evidence?

16 A Yes.

17 Q And with respect to the red notebook, and I'll approach if I
18 may, Your Honor. Once again, this red notebook also contains
19 some rap lyrics, is that right?

20 A Yes.

21 Q And you and I have also gone through this notebook and
22 pulled out a number for discussion today, is that right?

23 A That's correct.

24 Q But aside from the fact that we've pulled them out, and
25 aside from the fact that there's a few that are now in plastic

1 envelopes, the lyrics were essentially handwritten pieces of
2 paper, more or less presented as they are now?

3 A Yes.

4 Q And as with the black binder, inventory, and DEA agents
5 wrote N-47 and a page number for each of the lyrics in the red
6 notebook, is that right?

7 A That's correct.

8 Q There were also some miscellaneous documents and photographs
9 and things like that recovered along with Government's Exhibit
10 SE-47, the notebook, is that right, Special Agent Klas?

11 A Yes.

12 Q And they were also designated with DEA number, showing an
13 N-47 recovery number?

14 A That's correct.

15 Q This is a State of Maryland Maintenance Administration
16 authorized identification card?

17 A Yes.

18 Q In whose name?

19 A Shelton Harris.

20 Q The remainder of the house was also searched, is that right,
21 Special Agent Klas?

22 A Yes.

23 Q On the subject of N-47 recoveries, and we are going to go
24 through some additional materials, but I do want to show you a
25 couple of items that were recovered from the red folder, SE-47,

1 which were previously marked as Government's Exhibit SE-10.

2 Putting them up on the screen. Was this document among the
3 documents taken from the red folder? For your reference, Special
4 Agent Klas, there's, do you see the N-47 designator?

5 A Yes, I do. Yes, it was.

6 Q From the red folder?

7 A Yes.

8 Q Also from Government's Exhibit SE-10 and with the same 47
9 designation, is this another item taken from the red folder?

10 A Yes.

11 Q And for the record, one of these pages reads, Free Bo and
12 Weaze? Am I reading that right?

13 A Yes, you are.

14 Q And the second page reads, Free Bo?

15 A That's correct.

16 Q Let me ask you about some of those rap lyrics that I've
17 alluded to a couple times, Special Agent. If I could just get
18 myself situated here, Your Honor. You've had an opportunity to
19 review the various pages of handwritten lyrics that I'm going to
20 be asking you about today?

21 A Yes, I did.

22 Q In total, Special Agent Klas, from the black binder, there
23 was more than a hundred pages, sometimes double-sided pages, of
24 rap lyrics that we reviewed, is that right?

25 A Yes.

1 Q And there were another 50 or so, I'm ballparking, pages,
2 sometimes double-sided, from the red folder?

3 A Yes.

4 Q In going through and deciding what to discuss for your
5 testimony today, did we pick out each and every rap lyric that
6 made a reference to narcotics?

7 A No, we did not.

8 Q Did we pick out every single one that made a reference to
9 firearms?

10 A No.

11 Q Did we pick out every single one that made a reference to
12 violence?

13 A No, we did not.

14 Q In discussing this, what were you mindful of and what were
15 you looking for as you were looking through these lyrics?

16 A Violence, individuals, things that were, that we talked
17 about earlier in the trial here. Things grounded in what we, in
18 what was reality.

19 Q Let me show you a piece of paper marked as Government's
20 Exhibit SE-45-9. This piece of paper taken from the black
21 notebook, is that right?

22 A Yes.

23 Q SE-45 from the black notebook.

24 Is this one of the documents that we went over in
25 preparation for your testimony?

1 A Yes.

2 Q I'm going to indicate on the screen here as well as I can
3 some of the items I'm going to ask you to read, Special Agent.
4 Can you read this part beginning there? Beginning right here?

5 A My crack sells and my weed sells. I'm well connected. My
6 drugs ride and my slugs fly, I'm well protected.

7 Q And how about this next paragraph here?

8 A Down we thugs to the most high, we thug infested but check
9 it, Shakedown Sheistyville niggas is raunchy.

10 Q Shakedown and Sheistyville are the music company and the
11 music label that's been referred to a number of times in this
12 case?

13 A Yes. Yes.

14 Q How about beginning this paragraph?

15 A Bo's home now. We blow in dro now.

16 Q Actually. Hold on. I want to make sure we're not losing
17 anything. Bo's home now, and continue?

18 A We blow in dro now. Let's get this doe now and fuck all
19 these ho's for right now. We're on -- I can't make that word out
20 -- now.

21 Q There are frequent instances where you can't make out words,
22 is that right?

23 A Yes.

24 Q There's a reference here to the word "doe." Is that a word
25 you've seen a number of times in these lyrics?

1 A Yes.

2 Q In this context, Special Agent, what did you understand
3 "doe" to mean?

4 A Money.

5 Q How about at this paragraph, beginning right there?

6 A Plus we're all gun and knifed downed. I told four on life
7 of the down another life would be found.

8 Q And last -- I'm sorry, Special Agent. Were you done?

9 A Yeah. I believe I was done.

10 Q Last reference on this page.

11 A It's going to take death to stop us from bucking these
12 rounds and you'll never catch none of us fucking with clowns.

13 Q Let me ask you about the word "bucking." What did you
14 understand "bucking" to mean in this context?

15 A Shooting or firing rounds.

16 Q Is there any other part of this case, Special Agent, where
17 you've seen the word "bucking" come up?

18 A Yes. I've heard are, I've heard buck.

19 Q Specifically, you've heard played in court the Irene
20 Magginson voice mail, which a number of witnesses testified
21 about, is that correct?

22 A That's correct.

23 Q Is there a part of that voice mail where the word "buck buck
24 buck" or words to that effect are used?

25 A Yes.

1 Q If you can read it, Special Agent. Let me know if you need
2 help. And I know that your screen doesn't always show from the
3 same perspective as we do. Just read that first paragraph.

4 A Your guns might pop but guns up at the heights pop just a
5 little louder. And my niggas -- looks like it's crossed -- piss
6 in they own fingers to remove the powder.

7 Q What did you understand the reference to "the heights" to
8 mean there?

9 A In this context, Park Heights.

10 Q Showing you what's been marked as Government's Exhibit
11 SE-13. This is one that was previously marked, I think by Mr.
12 Harding, which is why it has a slightly different exhibit number.
13 But again, this is a document from the black binder, is that
14 right, Special Agent Klas?

15 A Yes.

16 Q Going to focus in for a minute. Please do not hesitate to
17 tell me if you need me to focus in more. This particular page, I
18 would like you to read from this section.

19 A Okay. I would actually like you to focus out a little bit
20 more.

21 Q Sure. Sorry about that. That's all right? Is that good?

22 A A little bit further. A little bit further. I think I can
23 work with that. Thank you.

24 Know the downs back on track, yeah. We back to doing
25 black on black crime. Back in the streets bustin black on black

1 nines, with crack in those streets to the fiends, don't worry,
2 the crack's fine. For those who don't know, I cop all of my weed
3 sacks life. One love to my nigga Chris D who cracks spines.
4 I'll go to war with my nigga. Ock. Hopefully he will get five.
5 Got five. Excuse me.

6 Q The reference to Chris D, Special Agent Klas. Is there a
7 Chris D in this case?

8 A Yes.

9 Q And who is that?

10 A Chris Dobropolski.

11 Q I want to make sure we're reading this part right. Can you
12 read this section again that I'm underlining?

13 A Blacks on black crime. Blacks on blacks crime.

14 Q And the word "crime" is inserted there?

15 A Yes.

16 Q Government's Exhibit SE 45-12. First of all, holding up for
17 the jury, Special Agent, I mentioned that there was a red piece
18 of paper we're going to come to. Is this the red piece of paper
19 that's seen in the photograph you were looking at earlier?

20 A Yes.

21 Q Specifically, there's some underlining over on this side?

22 A That's correct.

23 Q First of all, one thing that I neglected to ask you a couple
24 times. These lyrics are generally signed, is that right?

25 A Yes.

1 Q And in this case the signature reads what?

2 A I'm not certain I'm getting the whole image. Thank you.
3 Little Roc, Sheistyville, Shakedown.

4 Q And some of the other papers, do you recollect seeing the
5 word Hard Roc as a signature?

6 A That's correct.

7 Q Can you see the top part right now?

8 A Yes.

9 Q If you can, please read that section?

10 A I blast lungs but really aim for lips and that's for the
11 niggas who be talking shit. Whose your dogs and, em, nigga, who
12 you barking with, your whole mob can get --

13 Q Not sure of that word?

14 A No. Cause of you talking shit.

15 Q Does that look like the word "spark?"

16 A Yes.

17 Q Your whole mob can get spark because of you talking shit?

18 A Yes.

19 Q I'm going to zoom out a little bit, Agent. Are you able to
20 make sort of the main body?

21 A Pardon me?

22 Q Are you able to make out the main body of this particular
23 one, beginning here?

24 A Yes.

25 Q Why don't you begin with that line and read the first

1 stanza?

2 A Yo I hate niggas they run they lips too much always put they
3 heart in. They bitch too much. Yo, that dude that thinks your
4 dog a snitch to the DA.

5 Q Jumping down a little bit. Beginning there and then
6 continuing to that line. Can you read us that part?

7 A Or leave his mind, body and soul stiff from the four fifth.

8 Q The reference to four fifth, in this context, do you have an
9 understanding of what it would mean to leave a body and soul
10 stiff from the four fifth?

11 A I think the body and soul being stiff would be a dead body,
12 and the four fifths are a .45 caliber firearm.

13 Q And how about from this part here?

14 A Could you move the paper a little bit?

15 Q To this direction?

16 A Yes. That's perfect.

17 Q Sorry about that.

18 A That's all right. Talk shit. It won't take much for y'all
19 to get touch cause nigga who run they lips too much snitch too
20 much and just end up in a ditch with a bunch of his kind. With a
21 whole bunch of his kind. Excuse me.

22 Q Government's SE 45-16. Are you able to make out that page,
23 Special Agent?

24 A Yes.

25 Q It's a little small. Maybe I'll try. Can you see this

1 reference here?

2 A Yes.

3 Q Can you please read from, say, around about there and then
4 continue on?

5 A B-More streets. I'm a buck wild, buck crowds, I was born to
6 be foul. Leave you witch a gut out.

7 Q A little hard to read that part?

8 A Yeah.

9 Q How about the next line, if you could, for the record?

10 A Starting with "a go?"

11 Q Yeah.

12 A Pow pow pow pow pow. When my guns pop they make bitchin'
13 niggas.

14 Q Before we move on to next stanza, this word "buc", is that
15 another word that we've seen previously that I think we've
16 already talked about?

17 A Yeah.

18 Q Erasing all of this. Is there a reference to the word 'def
19 jam' in this paragraph?

20 A Yes.

21 Q If you would, can you read for us that paragraph that I've
22 just indicated?

23 A Yeah. Feel me yo. I'm a make these niggas want a kill me,
24 yo, male these niggas want a feel me, yo, make Def Jam want a
25 record deal me, yo.

1 Q Now, in this case the reference, "make Def Jam", "make Def
2 Jam want a record deal me yo." From your reading, is the word
3 "record deal" being used as a verb? In other words, record deal,
4 give me a record deal?

5 A Yes.

6 Q And Def Jam, again, is something we've heard previously in
7 this case?

8 A That's correct.

9 Q How about the next paragraph?

10 A I'm trying to expand from selling these pills to making
11 appeals to making them mills and making them films.

12 Q Mills as it's used here is a reference to millions?

13 A Yes.

14 Q And how about appeals in this context? Would that be a
15 reference to music or raps, in your opinion?

16 A No.

17 Q What do you consider, what's your understanding of the word
18 'appeals' there in that context?

19 A Well, selling these pills, these pills to making appeals. I
20 believe it's going into court, having court cases.

21 Q Before moving on, is there another reference to Park Heights
22 niggas, knife niggas and so forth in this paragraph?

23 A Yes. Yes, there is.

24 Q Government's SE 45-26. Can you make that out on the screen?

25 A It's a little blurry but I think I can make do.

1 Q If you need me to walk it up to you, Special Agent,
2 obviously, I'm happy to. First of all, it's signed by Hard Roc.
3 I think I keep neglecting to ask you about that?

4 A Yes.

5 Q The last document we saw was also signed by Hard Roc or has
6 Hard Roc on it?

7 A Yes.

8 Q It's a little blurred, Special Agent. I'm going to try to
9 auto focus this a little bit. But I'm indicating a particular
10 paragraph there?

11 A Yes.

12 Q A moment's indulgence, Your Honor. Really not making it any
13 better. Not sure I can make that any better, Special Agent. Are
14 you able to make that out?

15 A Yeah. If you can move it a little bit to the left. And
16 would you fold over that piece? Fold back? Excuse me.

17 Q Is that good?

18 A Yeah.

19 Q Why don't you go ahead?

20 A You catch me all around Baltimore demanding respect, hand on
21 my tek, Roc ah run up on the left side of your Lex and let tha
22 shells expand all in your chest.

23 Q Let me ask you about the left side of your Lex. You're not
24 aware of any Lexus, any automobiles that are Lexuses in this
25 case, is that correct?

1 A No, no Lexus.

2 Q But there has been evidence about a couple of cars, is that
3 right?

4 A That's correct.

5 Q Specifically, in the case of murder of Oliver McCaffity,
6 there was a fingerprint found on one side of the car?

7 MR. MARTIN: Objection, Your Honor. Summary witness.

8 THE COURT: There's evidence. There's evidence. You
9 can go ahead.

10 Q There's evidence of a fingerprint being recovered from the
11 McCaffity murder vehicle?

12 A Yes.

13 Q On what side of that car were the fingerprints found?

14 A The left.

15 Q Special Agent, did you, during our review of these lyrics,
16 did we look for references in which any of the lyrics would have,
17 would talk about spitting realness or truth, or words to that
18 effect?

19 A Yes.

20 Q Why?

21 A Well, that was, that was a common theme that we found in a
22 lot of these.

23 Q Let me show you what's been marked as Government's Exhibit
24 SE-17. But again, all of these exhibits we're going through so
25 far from the black binder, is that right?

1 A Yes.

2 Q The title of this document is, It's Hard Roc?

3 A Yes.

4 Q Can you read that reference, please, understanding it's a
5 bit blurred.

6 A We dropping something Shakedown Entertainment, spit
7 realness.

8 Q What, to your understanding, what does "spit" mean? That's
9 a word that comes up periodically in this case, in these lyrics,
10 is that right?

11 A Yes.

12 Q What's "spit" mean?

13 A Basically to recite the lyrics, rather than say "sing." I
14 guess "spit" could be used instead.

15 Q Government's Exhibit SE-18, Special Agent. Again, from the
16 black binder, is that right?

17 A Yes.

18 Q Are you able to make that out?

19 A Yes.

20 Q The section I'm highlighting?

21 A Yes.

22 Q Once again, before we go on, I should have done this. Once
23 again, it's signed by Hard Roc, is that right?

24 A Yes.

25 Q If you could, please go through the section I've

1 highlighted.

2 A I ain't tweet fuck ah oops, anyway, cause I live it finding
3 out the truth because I did it. I'm sorry. Excuse me. I live
4 it fuck finding out the truth cause I did it, feds still trying
5 to find out more about me and the tools -- pardon me -- and the
6 fools that I've hitted, still trying to find the tools that I've
7 spitted.

8 Q You understand the word "feds" to mean federal
9 investigators?

10 A Yes.

11 Q How about this word? The word "tools." Is that a word that
12 you've every seen in any of your investigations?

13 A Yes.

14 Q What do you understand "tools" to mean in this context and
15 from your hearing of the term previously?

16 A It's a common name for, an alias name for a firearm, a gun.

17 Q Government's Exhibits SE 45-38. This is another rap from
18 the black binder once again signed, sometimes a little hard to
19 read, but does that appear to read Hard Roc?

20 A Yeah. By Hard Rock.

21 Q Are you able to read out that section?

22 A Yes, I am.

23 Q If you would, please, read the next couple of paragraphs.

24 A Who they let in the door. Yah messed up. Roc ain't meant
25 what he did. His mind just messed. Watch me leave them with

1 half of his mind just messed up, leave the other half for the
2 cops to clean the rest up. Shake Down Sheistyville west side of
3 things.

4 Q How about beginning that little arrow? Are you able to make
5 that out?

6 A Starting with "some pain?"

7 Q From "some pain" and thereafter?

8 A Some pain just because my man got locked, don't think our
9 plans guns stop.

10 Q Because my man got locked, don't think our plans guns stop.
11 Is that your reading?

12 A That is the correct reading, yes.

13 Q Your Honor, for the Court's reference, my ballpark is I'm
14 about halfway through.

15 THE COURT: Okay. Good. This is a good point, I
16 think. We'll take a morning recess, ladies and gentlemen of the
17 jury, at this time. Please leave your note pads on your chairs.
18 Have no discussion about any of the evidence or the case.
19 Continue to keep an open mind about all issues.

20 The jury's excused for a 15 minute recess. We'll stand
21 in recess for 15 minutes.

22 (Recess.)

23 THE COURT: Have the jury, please.

24 (Jury enters the courtroom.)

25 THE COURT: You may proceed, Mr. Hanlon.

1 BY MR. HANLON:

2 Q Thank you, Your Honor. Special Agent Klas, it's almost good
3 afternoon.

4 A Good afternoon.

5 Q Once again, staying on the black binder. I am at
6 Government's Exhibit SE 45-57. If I can cue it up. I'm going to
7 ask you again to read a section of this. Are you able to read
8 this?

9 A A little bit again to my left.

10 Q Before I do that, I should probably ask you a couple
11 preliminaries. There was no signature on this one initially, is
12 that correct?

13 A No. There's no signature.

14 Q It does say HR at the top, is that right?

15 A Yes.

16 Q And the rap written on journal paper with topic line and
17 stuff like that, that's similar to some other raps that you've
18 seen that are signed by Hard Roc, is that right?

19 A That's correct.

20 Q Moving up a little bit. Are you able to see everything?

21 A A little bit to my left.

22 Q Like that?

23 A Yes. You have to zoom out, I think.

24 Yup. A little bit to my left. I can work with that.

25 Q Is that good?

1 A Yeah.

2 Q Again, if you could read from that line down?

3 A Okay. Niggas with guns late nights taking doses of greeny
4 to blacken the lungs.

5 Q Is that greenery?

6 A Greenery, yes. To blacken that lungs. We are men of our
7 word when we made a promise trapped in violence, formed a strong
8 thug alliance, B-more young criminal giants, repping our bandanna
9 was the daily science. Sheisty from the start. Sheistiness was
10 born in our hearts. Also became an art.

11 Q Last stanza?

12 A Kept the fighting kills sharp by taking to one another.
13 Since then we're brothers surrounded by homicide, caution signs
14 and white covers.

15 Q One thing I wanted to make sure that I read properly. Does
16 that read "strong thug alliance?"

17 A That's right.

18 Q Hard Roc refers to a strong thug alliance here?

19 A Yes.

20 Q Government's Exhibit SE 45-58. Are you able to make that
21 out?

22 A Yes.

23 Q Once again, this particular rap is not signed, is that
24 right?

25 A That's correct.

1 Q But it's written on the same journal paper we've seen?

2 A Yes. And it's written in a similar style.

3 Q And it came from the black notebook?

4 A Yes.

5 Q The topic reads Sheisty. Am I reading that correct?

6 A Yes.

7 Q If you could, Special Agent, if you could read the section
8 beginning there, continuing over the next paragraph or two?

9 A I blast guns, shiest for ones, and will be quick to leave a
10 nigga with a big ass sore in his neck. I roll with shiest
11 thuglets that oh rope your whore in duct tape the bitch, ah the
12 night just even rape the bitch and leave her stiff from the waist
13 up looking fake as shit. We good burners and clips.

14 Q Burners and clips. Is there something called a burner
15 phone, that is a prepaid phone?

16 A Yes.

17 Q And there's a, burners are also sometimes used to refer to
18 something else?

19 A Sometimes it's referred to, firearms are also referred to as
20 burners, that's correct. And clips, magazines from a firearm.

21 Q Understanding some of the spellings are a bit unusual. Can
22 you read a section, make sure we got it right?

23 A Rope your whore in duck tape. The bitch.

24 Q There's also reference in this particular rap to a sore in
25 the neck. Do you see that there?

1 A Yes, I do.

2 Q Again, referencing the evidence from this case, Special
3 Agent Klas, have there been any references to people being shot
4 in the neck or the upper part of the body, near the neck?

5 A Yes, there has been.

6 Q Government's Exhibit SE 45-52. Are you able to make that
7 out?

8 A Yes.

9 Q If you would, please read from that first line and continue
10 through the next paragraph.

11 A Okay. While the best thing to do is hit em and make the
12 rest of em hear me out right, white right, I'm a run up on his
13 left side so you know I'm a blow his brain right. And again,
14 white right.

15 Q And again, have there been any, any references on this case
16 to an approach from the left?

17 A There was evidence of the left of the car, yes.

18 Q In the McCaffity case?

19 A Yes.

20 Q This was previously marked again from the black binder as
21 Government's Exhibit 19 and it is a two-sided document, Special
22 Agent Klas, is that right?

23 A Yes, it is.

24 Q Put it up on the screen. And I'm going to ask you to read,
25 read this one in its entirety, beginning from the, from the start

1 to the finish.

2 A I want hard to the point that I lost my fucking finger and I
3 don't mind losing another one or my life. One love to the
4 Heights for life. We'll all live Sheist and nothing can change
5 that or rearrange that. You can catch me in different hoods
6 running with the same cats. I'm here to bring the game back.

7 Q A couple references here before we flip the page. First of
8 all, has there been any reference in the case to anyone losing a
9 finger?

10 A Mr. Harris.

11 Q This particular rap is not signed in this instance. I don't
12 think it is on this side or on the other side, is that right?

13 A No. But you'll notice that a lot of Mr., the lyrics signed
14 by Mr. Harris, he dots his I's in a similar fashion like there,
15 with Heights, yes.

16 Q With a little asterisk?

17 A Yes.

18 Q And again, this page comes from the black binder?

19 A That's correct.

20 Q While on the subject of the Heights, Heights is in Park
21 Heights?

22 A Yes.

23 Q Finally on this page, can you reread that section?

24 A You can catch me in different hoods running with the same
25 cats.

1 Q What does "hoods" mean, to your understanding in this
2 context?

3 A Different neighborhoods.

4 Q And does "cats" mean people?

5 A Yes.

6 Q And finally, have you ever heard reference to "the game?"

7 A Yes.

8 Q What does "the game" mean?

9 A Drug game. Drug business.

10 Q Sometimes referred to as the game?

11 A That's correct.

12 Q Next page of 45-67, SE 45-67. If you could, read through
13 this, please.

14 A Brains dropping on floors, Roc ah come through, leave you
15 and, leave you and the forensic technician popped in the morgue.
16 I like to start shit and see bodies dropping from fours and --
17 I'm sorry. From fours. Can't wait to see me and the down up in
18 the source bust fours and of course I'll feel no remorse. Just
19 never fuck with the down because you'll be fucking with force.

20 Q A couple questions here. First of all, there's a couple of
21 references to down or da down. In this context, what do you
22 understand that to mean?

23 A Shakedown Entertainment.

24 Q You've heard numerous references to the down or down or down
25 is like a noun, a party?

1 A Yes.

2 Q There's also two references to four's here. Have you ever
3 seen the word "fours" used to reference anything in particular?

4 A .40 calibers. Handguns.

5 Q What was that last thing you said, Agent?

6 A .40 caliber handguns. Excuse me.

7 Q Government's Exhibit SE 45-68. Once again, this is another
8 two page document. This one is signed by Hard Roc on that first
9 page?

10 A Yes, it is.

11 Q And it's also signed by Hard Roc on the second page, is that
12 right?

13 A That's correct.

14 Q Let me ask you about this back side. It's marked as side
15 two of two on Government's Exhibit SE 45-68. Are you able to
16 make that out?

17 A Yes.

18 Q Would you read -- let me redo that. From that section down
19 to that section, if you would.

20 A Big's what's beef is what I call beef 40 cal Ruger nigga is
21 what I call heat. So 4 those who got a beef me it'll be, it will
22 be a guarantee to be in, to be a --

23 Q To be an?

24 A Yeah. An. I see you. Pardon me. I see you and once this
25 heat pop I guarantee that I'll see you --

1 Q I'll see you.

2 A I'll see you the rough.

3 Q I'll see through?

4 A Yeah.

5 Q All of you chumps?

6 A Yes.

7 Q Bleed cause all they do is talk? And it goes on?

8 A Yes, it does.

9 Q Let me ask you a couple other questions. First of all, this
10 reference up here. Would you read that again?

11 A 40 cal Ruger.

12 Q Have there been any references in this case to .40 caliber
13 Ruger firearms?

14 A Yes, there have been.

15 Q We heard some testimony about that from a firearms examiner,
16 is that correct?

17 A That's correct.

18 Q In connection with the Wyche murder and the Lee shooting?

19 A That's correct.

20 Q This is Government's Exhibit SE 45-77, also from the black
21 binder?

22 A Yes.

23 Q All the screens seem to have gone. Just the page. If you
24 would, from that section, Special Agent, could you read from the
25 phrase, "I don't know?"

1 A Yes. But I think this paper might be a little bit wider so
2 if you zoom out just a bit.

3 Q Certainly. Thank you for that. Tell me when.

4 A I think I can.

5 Q Is that good?

6 A Yeah.

7 Q Go ahead.

8 A You don't know nothing about putting hits on niggas. Why
9 the fuck is this shit always get back to niggas. You make it
10 easier for us just clap a nigga. It's just me, Weaze and Bo back
11 to back with niggas. Bobbed and weave one of ya niggas. Now
12 it's crack a nigga hope God's guard in sole I ain't just rappin
13 nigga. I ain't just rap a nigga. I'm trying fill you up with
14 holes.

15 Q If could you read that stanza, Special Agent. Let me try to
16 unfold it for you. Actually, from "we in."

17 A We in a hurry cause we really want to get this nigga. My
18 nigga Bo a looney tune just ask a nigga. This shit about to
19 balloon. We got to grab this nigga. When we hit em we hit em
20 hard. We be jabbing niggas. Every heater you just got, we done
21 had it, nigga.

22 Q A moment please, Your Honor. Special Agent, is there a
23 reference to a crew in this particular rap?

24 A I believe there was. Could you point that out to me?

25 Q I'm looking for it myself and I may just move on.

1 A Yeah. See right there. Bottom.

2 Q There you go. Thank you. Read that section.

3 A You have to, sorry, move the paper over for me, please. My
4 killa crew ah be livin lavish nigga. You should know by now that
5 I'm ah hazardous nigga. Me and my niggas is the maddest.

6 Q And that was the section you just read there? Soon me and
7 my killa crew?

8 A Yeah.

9 Q Government's Exhibit SE 45-89. Are you able to make that
10 out?

11 A Yes.

12 Q And in fact, before we move on, Mr. Harding is reminding me
13 that the rap that we were just looking at, which is Government's
14 Exhibit SE 45-77, this one right here, is signed by Hard Roc, is
15 that right, Agent?

16 A Yes, it is.

17 Q This one corresponds to one of the raps that we heard
18 yesterday played on the CD's during Mr. Hayes's testimony, is
19 that right?

20 A Yes.

21 Q And specifically, it corresponds to Track 19 on the CD's
22 which was at the jury's Tab Six of their transcript book, is that
23 right?

24 A Yes.

25 Q All right. Government's Exhibit SE 45-89. Another rap

1 signed by Hard Roc?

2 A Yes, it is.

3 Q Can you read from that section forward?

4 A I'm a grab you by your throat and use your head muffle my
5 tek. Who you know that got muscle like that. Yo were on the
6 block day to day flipping scales up crack for those who don't
7 know the downs back on track. Yeah we back to doing black on
8 black crimes, back in the streets busting black on black nines
9 and never have discussion about nothing on tap lines, my bullets
10 go in and out of niggas cracking their back spine. Bo you know a
11 lot of niggas got left flatlined before we left the streets and
12 got knocked by those rat's dimes for you bitches, for you bitch
13 niggas Shakedown is officially back. Yup.

14 Q All right. That's a reference to Bo, is that correct?

15 A Yes.

16 Q Special Agent Klas, what do you understand the term
17 "flatline" to mean? Bo you know a lot of niggas got flatlined
18 before we left the streets?

19 A Heart rate, flat line, murder, dead.

20 Q And it ends, this section that we read ends with "Shakedown
21 is officially back" in reference to someone called rat's dimes
22 for you bitch niggas, Shakedown is officially back?

23 A Yes.

24 Q Your Honor, for the Court's reference, this is the last in
25 the black binder and then we have just a few in the red folders.

1 We are getting near the end.

2 THE COURT: Very well. Thank you, Mr. Hanlon.

3 Q Government's Exhibit SE 45-94. You see that on your screen?
4 Are you able to make it out?

5 A Yes.

6 Q If you would, Special Agent Klas, could you read from, from
7 the first stanza beginning, "I'll tell you?"

8 A Okay. I'll tell you to your face "fuck you", pull this
9 Glock off my waist and buck you. You better buck a nigga first
10 before he bucks you cause niggas on the streets today, dog, don't
11 give a fuck about you.

12 Q Down a couple lines below. I always keep.

13 A I always keep a four-fifth tuck in the linen.

14 Q And finally, I hustles plus I heist to run. Could you read
15 that section?

16 A I hustles -- I'm not sure what that word is in between --
17 plus I heist to run in your crib, take your bricks, chips, and
18 ice, too, duck tape, duck tape your pet, kids and your wife, too,
19 if you're down for heisting, dog, then come and heist with my
20 crew. We'll do anything to heist you, play you close, love your
21 folks, then we'll sheist. You got killers that fuck kids and
22 wife too.

23 Q And it ends down below with a reference to Shakedown and
24 Sheistyville?

25 A Shake down and Sheistyville bitch don't give a fuck about

1 you.

2 Q References to buck up near the end. Again, we've already
3 talked about the word "buck" in this case, is that right?

4 A Yes.

5 Q There's a reference to Four Fifth. We've seen a similar
6 reference already?

7 A Yes.

8 Q And what, where have you heard the term "four-fifth" before?

9 A As in a .45 caliber handgun.

10 Q There's also reference to the word "hustling." What does
11 the word hustling, have you ever heard that term used in the
12 context of your investigations?

13 A Drug dealing.

14 Q Last out of black binder, government's exhibit SE 45-108.
15 Once again signed by Hard Roc?

16 A Yes.

17 Q Are you able to make out the first line there, Special
18 Agent, beginning "while you niggas?"

19 A Yes.

20 Q If you would, please, read from "while you."

21 A While you niggas was doing rap a lot, I was selling crack a
22 lot in Park Heights, most famous crack spot Woodland, where they
23 be doing a lot of clapping a lot and where the fiends be doing a
24 lot copping and bopping, 40 LL's is what I be putting them rocks
25 in rather -- pardon me.

1 Q That's all right. And I rather rock my --

2 A Strip than rock my wrist.

3 Q Let me ask you a couple questions. First of all, there's a
4 reference here to Park Heights, is that correct?

5 A Yes.

6 Q There's also a reference to Woodland. Have we heard
7 testimony about a Woodland Avenue in this case?

8 A That's correct.

9 Q For Mr. Hayes yesterday?

10 A Yes.

11 Q There's a reference to crack and there's a reference to a
12 rock. Have you heard, what does the term "rock" mean in your
13 experience?

14 A Crack cocaine.

15 Q How about fiends? Right here.

16 A Addicts, people addicted to narcotics.

17 Q Customers?

18 A Yes.

19 Q Now, Special Agent, that represents what we selected from
20 the black binder. And again, we didn't go through the entire
21 binder. There's about a hundred more pages of raps in there, is
22 that correct?

23 A There's a lot, yes.

24 Q And those are the documents that are enclosed as part of
25 Government's Exhibit SE-20 on the table, is that right?

1 A That's correct, yes.

2 Q Moving now to the red folder, which is Government's Exhibit
3 SE 47, corresponding to the DEA seizure number. Let me show you
4 a few items. There's only a handful that we've selected from the
5 folder, beginning with Government's Exhibit SE 47-15. See this
6 rap in front of you?

7 A By Hard Roc Shakedown, yes.

8 Q And you've already anticipated one of my questions. This
9 corresponds to Track 11 that the jury heard yesterday, which is
10 at Tab Three of their binder, is that right?

11 A I recognize it, yes.

12 Q If you would, just beginning at the first line and reading
13 down. Could you read, first, a few paragraphs for us?

14 A Okay. It's going down because the down is around, Bo's
15 general, I'm captain, Slo's Sergeant, now TM's stepped up from a
16 private, no need hide it. He was loyal, dedicated, plus survived
17 riots. Homey the fifth, I'll leave you with one eye like a
18 fucking pirate.

19 Q Okay. A couple references down. Beginning with fo shizzle.

20 A Fo shizzle I'll leave him flat on his back for my nizzle Bo.
21 Let a --

22 Q Missile?

23 A Let a missile go, leave his ass hanging from --

24 Q From ceiling?

25 A From ceiling like a missile toe.

1 Q All right. Hold on a sec. Let me jump back a little bit.
2 How about from here? Gotta?

3 A Gotta four-fifth that will turn your ass vegetable or I
4 could dress up in all black and show you what these tek, what
5 this tek can do and watch your brains fly all over on that bitch
6 next to you.

7 Q Let me unfold this paragraph a little bit.

8 A Could you move it over a little bit to the left, also?

9 Q Like that?

10 A Yeah. Thank you.

11 Q Would you continue through that stanza?

12 A Home boy it's up to you. I can put this --

13 Q Pump?

14 A Yeah. Pump to you, then start the pump, then start the pump
15 in you up like a --

16 Q Inner tube?

17 A Inner tube, sun shots that -- I can't make that out.

18 Q Something something.

19 A The inner --

20 Q Start over here.

21 A The inner you. Leave you all flat, all fat and bloated.

22 You know I keep the Mac loaded and I like to clap rodents, that's
23 why Bo and Weaze on lock now, every day on lock down, niggas get
24 shot down for running they mouth down, tell me how it feels with
25 a gun in ya mouth now.

1 Q Government's Exhibit SE 47-18. This corresponds to Track
2 Four, which I believe is located, for purposes of the record, was
3 played yesterday and was at -- a moment please, Your Honor --
4 track two, which was played yesterday, and corresponds to Tab
5 Four of the jury's book. Are you able to make that out in front
6 of you?

7 A Yes.

8 Q Give us that first line there.

9 A Yo, you think they call me Hard Roc for nothing? You think
10 I'm out here rocking hard rocks for nothing?

11 Q How about from "rocking and rollin'?"

12 A Rocking and rollin' cops posted on the block trying to fuck
13 up my flow and trying to stop the boy from getting his dough and
14 when you know a lot of people just want a stop you from knowing,
15 haters wanna stop you from keeping it going.

16 Q How about, you know what I'm saying?

17 A You know what I'm saying? You niggas know I ain't playing.
18 When it's beef with the down, you niggas know what I'm spraying.

19 Q There's another reference to da down?

20 A Yes.

21 Q Also from the red folder, Government's Exhibit SE 47-38.
22 Are you able to make that out on the screen?

23 A Yes.

24 Q This one is not signed from what we can tell, is that right,
25 Agent?

1 A That's correct.

2 Q But it was found in the red folder that's marked
3 Sheistyville?

4 A Yes.

5 Q If you would, just read that first stanza.

6 A Niggas keep running ya lips and I'm gonna come and put this
7 gun between ya gums and ya lips, bust it off, put ya fucking nose
8 in front of your lips.

9 Q A moment please, here, Agent. Moving up a bit. How about
10 from Roc ah run up?

11 A Roc ah run up in ya crib, put one in ya bitch, leave the
12 kids crying, bath water running and shit. I ain't got a worry
13 about the feds running in shit. Black mask, black gloves, keep
14 my gun in my dip, dog, you'll never see my block ass running in
15 shit. Shakedown entertainment, you, we running this shit.

16 Q Last one. Also from the red binder, Government's Exhibit SE
17 47-41. From rest in peace, Special Agent Klas.

18 A Rest in peace to all my people that died. They wanna know
19 if it's the down, nigga. Yes indeed. You thought the first two
20 was hot, check the next CD. I'm like a nigga behind the scenes.
21 Niggas can't see me, yeah.

22 Q With respect to those first two paragraphs, let me ask you a
23 couple of questions. Yes, indeed you thought the first two was
24 hot, check the next CD. Have I read that right, the underlying
25 part?

1 A Yes.

2 Q There's also reference to, I'm like a nigga behind the
3 scenes. Niggas can't see me, yeah. You see that?

4 A That's correct.

5 Q Are there any references to two people being shot from
6 behind in this case?

7 A Yes.

8 Q Beginning after yeah and beginning with, that's right, yo.
9 If you could continue.

10 A That's right. The -- I need some help with that.

11 Q Something from the Heights?

12 A From the Heights to be precise, when I write, yo, it's like
13 whatever's in the dark I bring to light and whatever, whatever's
14 dead and gone I can bring the shit back to life. Homey, ya boy
15 got access to the afterlife. Like Roc ah introduce you fucks to
16 the afterlife. Whoodi, I know ya feeling me to the four-fifth.

17 Q Let me ask you a couple of questions here. There's a
18 reference to, there's a reference to the Heights once again?

19 A Park Heights.

20 Q There's a reference here to Roc introduce you fucks to the
21 afterlife, is that correct?

22 A Yes.

23 Q What do you understand that to mean, Special Agent Klas?

24 A Roc killing someone.

25 Q And immediately after this reference to Roc introducing

1 someone to the afterlife, who does he reference in the next line?

2 A Whoodi.

3 Q And he writes, Whoodi, I know ya feeling me to the
4 four-fifth?

5 A Yes.

6 Q And four-fifths, we've heard testimony previously, can
7 correspond to a .45 caliber firearm?

8 A Yes.

9 Q Who is Whoodi that we've heard in this case?

10 A Oliver McCaffity.

11 Q Agent Klas, let me just ask you now about a few odds and
12 ends. Your Honor, on one point, I've reached an agreement with
13 counsel for Mr. Harris and counsel with Mr. Gardner to enter into
14 a stipulation. I'd like to sort of summarize the stipulation
15 now. I would anticipate putting something in writing on this
16 topic. But it would be appropriate to do it now.

17 THE COURT: Certainly. No objection?

18 MR. HANLON: The parties and defendants Shawn Gardner
19 and Shelton Harris stipulate that Shawn Gardner, that prior to --
20 would be easier if I read it separately. The United States and
21 Shawn Gardner stipulate that prior to June 7, 2002, the
22 defendant, Shawn Gardner, had received or had incurred one
23 conviction for a criminal case in the State of Maryland
24 punishable by a term of imprisonment exceeding one year and that
25 Mr. Gardner's civil rights had not been restored relating to that

1 convict. That's as of, and that is prior to June 7 of 2002.

2 THE COURT: So noted.

3 MR. HANLON: The United States and Shelton Harris
4 stipulate that prior to and as of January 22nd, 2004, the
5 defendant, Shelton Harris, had incurred one criminal conviction
6 in a court of the State of Maryland for a crime punishable by
7 imprisonment for a term exceeding one year and that his civil
8 rights had not been restored relating to that conviction.

9 THE COURT: So noted.

10 MR. HANLON: And I will put something in writing, Your
11 Honor, along those lines.

12 THE COURT: All right. In other words, you'll reduce
13 the stipulation to a written exhibit which will be available to
14 the jury.

15 MR. HANLON: That would be my intention, Your Honor.

16 THE COURT: All right.

17 BY MR. HANLON:

18 Q Special Agent Klas, you have at our request obtained some
19 documents on various items from the State of Maryland, is that
20 correct?

21 A That's correct.

22 Q One of the set of documents that you received are from the
23 Maryland State Department of Labor, Licensing and Regulation, is
24 that right?

25 A That's correct.

1 Q This agency, which is commonly referred to as DLLR, is a
2 state agency that deals with various regulations dealing with
3 businesses and employment and labor and things like that?

4 A Yes.

5 Q We inquired with the business as to whether or not any of
6 the four defendants in this case had, during various points in
7 times, ever received or had any record of unemployment insurance
8 records relating to any employment. And DLLR, the Maryland state
9 department, provided responses as to whether or not such records
10 existed, is that right?

11 A That's correct.

12 Q Let me go through these and I'll try to be brief.
13 Government's Exhibit LR-1, which I'll put on the DOAR. Are you
14 able to see that?

15 A Yes.

16 Q Your Honor, I am endeavoring to --

17 THE COURT: Yeah. Let me just explain to the jury so
18 they're not wondering. Members of the jury, in recent years
19 courts have become particularly sensitive to the need to avoid
20 public disclosure of certain confidential information for any
21 person. I'm sure you can understand that. So we try as best we
22 can to avoid mentioning a person's home addresses as well as, and
23 most importantly of all, Social Security numbers. We really try
24 to keep those out of the record unless they're absolutely
25 essential.

1 So Mr. Hanlon is quite right to take efforts as best as
2 he can to avoid public disclosure of Social Security numbers.

3 Thank you, Mr. Hanlon.

4 BY MR. HANLON:

5 Q Thank you, Your Honor. This is DLLR's response relating to
6 Willie Mitchell, is that right?

7 A Yes.

8 Q DLLR informed us, in response to your request issued on
9 October 7, 2005, for information on the above referenced person,
10 a search, a search was conducted from 1997 through June, 2005
11 from the files of the Maryland Division of Employment,
12 Unemployment Insurance, Department of Labor, Licensing and
13 Regulation. No records were found matching the information you
14 provided for the above-named individuals. And this is certified
15 by the Department, is that correct?

16 A That's correct.

17 Q So no unemployment insurance benefits for Mr. Mitchell from
18 '97 through 2005?

19 A That's correct.

20 Q And Special Agent Klas, why do you make this kind of an
21 inquiry to an agency like DLLR? Why would you be interested in
22 getting unemployment insurance information?

23 A Unemployment insurance would be indicative to employment.
24 And so we were searching for any regular employment for any of
25 these defendants, in any of these defendant's pasts.

1 Q In Maryland, under Maryland state law and procedure and
2 regulation, are employers required to have some kind of an
3 unemployment insurance system in place for employees?

4 A Yes.

5 Q The absence of such record would be indicative of a lack of
6 employment?

7 A Yes. In this situation, particularly in the State of
8 Maryland, if you began to, in the time period that we've
9 researched, you begin to accrue unemployment insurance, if you
10 obtain a paycheck, two paychecks, one in two different fiscal
11 periods over an 18 month period. There was no steady employment,
12 no.

13 Q So it would be lack of steady employment?

14 A That's what this document would show, yes.

15 Q Similar request and response for Shawn Earl Gardner, for the
16 record. In response to your request issued on October 7th, 2005
17 for information on the above-referenced person, a search was
18 conducted from 1997 through June, 2005 from the files of the
19 Maryland Division of Unemployment Insurance, Department of Labor,
20 Licensing and Regulation. No records were found matching the
21 information you provided for the above-named individuals,
22 referencing Mr. Gardner?

23 A That's correct.

24 Q Similar request for Shelly Wayne Martin. And again, for the
25 record -- and I'm sorry. The Gardner request was Government's

1 Exhibit LR-4. I read them out of order. And for Mr. Harris the
2 document is Government's Exhibit LR-3. Is that right?

3 A That's correct.

4 Q And for Mr. Martin, the agency's response was, in response
5 to your request issued on October 7th, 2005, for information on
6 the above-referenced person, a search was conducted from 1997
7 through June, 2005 from the files of the Maryland Division of
8 Unemployment Insurance, Department of Labor, Licensing and
9 Regulation. No records were found matching the information you
10 provided for the above-named individuals. Is that correct?

11 A That's correct.

12 Q And finally, Government's Exhibit LR-2. Response with
13 respect to Shelton Lee Harris. In response to, the agency
14 reported, in response to your request issued on October 7th, 2005
15 for information on the above-referenced person, a search was
16 conducted from 1997 through June, 2005 from the files of the
17 Maryland Division of Unemployment Insurance, Department of Labor,
18 Licensing and Regulation. No records were found matching the
19 information you provided for the above-named individuals. Is
20 that correct?

21 A Yes.

22 Q You're also aware, Special Agent, that an inquiry was made
23 of the Internal Revenue Service for records of any taxes paid by
24 any of the four defendants?

25 A Yes.

1 Q And the Internal Revenue Service also sent back responses
2 recording that for various tax years there were no records of any
3 income tax returns being filed by the four defendants, is that
4 right?

5 A That's correct.

6 Q Let me show you what's been marked as Government's Exhibit
7 TA-1. This is a response for Willie Edward Mitchell?

8 A Yes.

9 Q And we saw any individual US 1040 tax return information for
10 Mr. Mitchell, is that correct?

11 A That's correct.

12 Q And we requested information for the tax years ending 1997,
13 1998, 1999, 2001, 2002, 2003, and 2004, is that correct?

14 A Yes.

15 Q The year 2000 is not listed in there. But every other year
16 between 1997 and 2004 is?

17 A Yes.

18 Q And this form indicated that upon review of regular tax
19 records, IRS was unable to find any records of tax returns for
20 Mr. Mitchell?

21 A That's correct.

22 Q Request was also made as to tax return information for Mr.
23 Harris, Shelton Lee Harris, is that right?

24 A That's correct.

25 Q And the IRS's report with respect to any 1040's being signed

1 or filed for 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004 is
2 that there were no IRS tax returns for Mr. Harris for any of
3 those years?

4 A That's correct.

5 Q Now, it should be noted Mr. Harris is the youngest of the
6 four defendants, is that correct?

7 A Yes.

8 Q And I'm not sure, I don't want to do the math, but it's
9 possible that some of these years might be at times which are not
10 surprising, is that fair to say?

11 A Yes.

12 Q To be clear for the record, every year between '97 and the
13 year 2004, no returns for Mr. Harris?

14 A That's correct.

15 Q Government's Exhibit TA-3. This is a request for Mr. Shelly
16 Wayne Martin, is that correct?

17 A That's correct.

18 Q In this case, once again, IRS's report for the filing of any
19 1040 individual income tax returns was that there were no such
20 returns on file for the following tax years: 1997, 1998, 1999,
21 2000, 2001, 2002, 2003, and 2004. Is that correct?

22 A Yes.

23 Q And again, unless I'm missing something, that would be every
24 year between 1997 and 2004?

25 A That's correct.

1 Q Finally, Government's Exhibit TA-4. This is our request
2 concerning Shawn Earl Gardner?

3 A Yes.

4 Q And IRS's certified return for this case, again, inquiring
5 as to whether any 1040 income tax returns were filed, is that
6 there were no such returns filed for the following years: 1997,
7 1998, 1999, 2000, 2001, 2002, 2003, and 2004. Is that correct?

8 A That's correct.

9 Q And again, that's every year between '97 and '04?

10 A Yes.

11 Q Special Agent Klas, in your experience in the drug
12 trafficking cases that you've investigated, it is often the case
13 that drug traffickers who are earning money or generating money
14 from drugs do not report drug-related income on their tax
15 returns?

16 MR. LAWLOR: Objection.

17 THE COURT: The objection's overruled. Obviously,
18 ladies and gentlemen, none of the defendants in this case are
19 charged with any tax type offenses. You may answer, Agent.

20 THE WITNESS: That's correct.

21 BY MR. HANLON:

22 Q Because it makes their income easier to track?

23 A Yes.

24 Q Finally, Special Agent Klas, you have a couple of documents
25 relating to the corporate entity of Shakedown Entertainment, is

1 that right?

2 A That's correct.

3 Q First of all, Government's Exhibit SD-1, SD as in shake
4 down, this is a CD disk which contains a recording, just for the
5 record, a recording of the tracks labeled Pure Shit, is that
6 right?

7 A Yes.

8 Q And that is Government's Exhibit SD-1. I'm sorry. For the
9 record, got that wrong. This is actually Government's Exhibit
10 SD-2. SD-2.

11 SD-1, you've seen this document before, is that
12 correct, Agent?

13 A That's correct.

14 Q These are corporate documents and various documents filed
15 with the State of Maryland relating to Shakedown Entertainment,
16 is that right?

17 A Yes.

18 Q A Maryland agency, the Maryland state agency that handles
19 forming corporations and getting licenses for business entities
20 and things like that is called the Maryland State Department of
21 Assessments and Taxation, is that right?

22 A That's correct.

23 Q Commonly referred to as SDAT?

24 A Yes.

25 Q Showing you first this trade name application, which was

1 provided by the State of Maryland. This is a trade name
2 application for a business calling itself Shakedown, is that
3 right?

4 A Yes.

5 Q There are two addresses referenced as business addresses for
6 Shakedown. PO Box 67996 in Baltimore, is that right?

7 A That's correct.

8 Q And Ten Duke of Windsor, Apartment 102, in Baltimore, is
9 that right?

10 A Yes.

11 Q The full legal name of the business is identified as
12 Shakedown Entertainment Limited?

13 A Yes.

14 Q And the address is identified as a Willie Mitchell at Ten
15 Duke of Windsor Drive?

16 A The address of owner, yes.

17 Q And the description of the business is identified as music
18 entertainment, is that right?

19 A That's correct.

20 Q There are also Articles of Incorporation filed with SDAT by
21 Shakedown Entertainment, is that right?

22 A Yes.

23 Q Articles of Incorporation are sort of standard legal
24 documents that form a corporation, talk about how it's
25 structured, what it's going to be called. Every corporation has

1 one of these. Just kind of like a constitution for the
2 corporation?

3 A Yes.

4 Q This particular set of Articles of Incorporation are, if I'm
5 reading that correctly, and Mr. Harding might correct me if I'm
6 wrong, I believe that reads December 5th of 2000? Does that
7 appear right?

8 A Yes, it does to me.

9 Q And the signatures for the individuals forming this
10 corporation are Willie Mitchell and an individual named David, if
11 I'm reading that correct, Cesar?

12 A Yes.

13 MR. HANLON: Just a moment, please, Your Honor.

14 (Pause in proceedings.)

15 MR. HANLON: I believe that's all I have, Your Honor.

16 Thank you, Special Agent.

17 THE WITNESS: Thank you.

18 MS. RHODES: Court's indulgence.

19 MR. MARTIN: Your Honor, I could be ten minutes or 30
20 minutes. If I had some time to go through this big book over
21 here, I'm going to be ten. So could we break for lunch and come
22 back?

23 THE COURT: That may be a good idea. Is anybody else
24 going to have any cross?

25 MR. KURLAND: I will and it will be between ten and

1 thirty minutes.

2 THE COURT: I think we should break for lunch now and
3 do the cross afterwards.

4 Members of the jury, I think we're going to finish the
5 government's presentation today. I can't be absolutely certain
6 of that. But that's our best guess right now. So I'll confirm
7 this for you, of course, this afternoon. But it looks like we
8 may not need you to come in tomorrow and that we'll resume on
9 Monday. But again, I'll confirm that for you after lunch this
10 afternoon.

11 In the meantime, we'll break for lunch now. Please
12 leave your note pads on your chairs, your materials on your
13 chairs. Have no discussion about the case. Continue to keep an
14 open mind about all issues. Jury's excused until two p.m.

15 Please be back in the jury room at two p.m.

16 (Jury exits the courtroom.)

17 THE COURT: Counsel for the government, is there
18 anything more you wish to say about the dual sovereignty
19 instruction? The Court intends to give that this afternoon.

20 MR. HANLON: Just to be certain, Your Honor, may I
21 borrow --

22 THE COURT: I'll do better than that. I will, I made a
23 couple of interlineated changes to Mr. Kurland's proposal. And
24 what I'll do is I'll have my law clerk make photocopies for
25 everybody and you'll have a copy.

1 MR. HANLON: Thank you, Your Honor.

2 THE COURT: We'll bring it down after the luncheon
3 recess. You can take a look at it. Just a couple of, really,
4 minor changes. And I propose to give that, I guess at the very
5 end, Mr. Kurland?

6 MR. KURLAND: I would prefer that it be given as part
7 of the government's case, and then also in the jury instructions.

8 THE COURT: I meant at the very end this afternoon.

9 MR. KURLAND: Yeah. And then again before the
10 instructions. It will be repeated.

11 THE COURT: Yes, of course. So what we've got left is?

12 MR. HARDING: Agent -- sorry -- TFO Benson, and the
13 stipulations and the reading of the changes in the exhibit
14 numbers, Your Honor. I'm beginning to get a little worried about
15 finishing today. If defense counsel are really threatening to
16 take a half an hour per defendant on Agent Klas, we'll never,
17 we'll never get done.

18 THE COURT: Okay. Well, if we don't, we don't.

19 I won't rule out the possibility, if we, you know, I
20 guess what I would suggest, Mr. Harding, save the stipulations
21 and the other stuff for the very end and then, so the government
22 won't have to formally rest today. If all that's left are the
23 stipulations and the exhibit stuff, we can do that Monday
24 morning. And then we can still excuse the jury tomorrow, have
25 argument on motions somewhat prematurely tomorrow, and we're in

1 the same place.

2 MR. HARDING: That's fine, Your Honor.

3 THE COURT: But as you saw with Ms. Rhodes this
4 morning, yesterday she was thinking maybe 20 minutes and she
5 turned out to use, it turned out she only used barely seven.

6 MS. RHODES: Twelve, think it was.

7 THE COURT: You say twelve, I say seven.

8 Okay. And I understand from Ms. Sovich that you have
9 the tape. Are you going to be in a position to --

10 MR. HARDING: Yes. Yes, Your Honor.

11 THE COURT: And the pro se pleadings, you just have
12 those marked?

13 MR. HARDING: Yes.

14 THE COURT: Just going to display them to the jury?

15 MR. HARDING: Yes. And move them in. I'm not, I'm not
16 planning on, I'm sure you'll be happy to hear I'm not planning on
17 reading them aloud.

18 THE COURT: Good. I am happy to hear that.

19 The tape is, what, about five minutes? Do you have a
20 tape of all four defendants?

21 MR. HARDING: Yes. It's the, it's the June, it's the
22 November 16th, 2005 initial incident day, where they all got up,
23 one right after the other. And we have a few excerpts from that
24 tape. But all four defendants are included.

25 THE COURT: And you're going to put that in through Mr.

1 Benson?

2 MR. HARDING: Yes.

3 THE COURT: Okay. So we'll finish today.

4 MR. HARDING: We could, if we go late we could
5 certainly finish.

6 THE COURT: I don't want to go late. But really, I
7 think it will be fine if we, if I can say to the jury there's
8 just a few more minutes, so the government's not formally
9 resting. But in light of that, and especially since the
10 defendants aren't ready to call any witnesses tomorrow, anyway,
11 we'll excuse the jury for tomorrow, bring the jury back Monday.
12 The government can formally rest. But we will do motions
13 tomorrow.

14 MR. HARDING: Well, can we do motions tomorrow even if
15 there's a bit of evidence left over?

16 THE COURT: That's what I'm saying. I'm sorry. I'm
17 not clear.

18 MR. HARDING: In the form of Benson.

19 THE COURT: No. We shouldn't do motions tomorrow if
20 you still got a witness hanging out there.

21 MR. HARDING: I just mean the end of Benson.

22 THE COURT: That's what I mean. We finish Benson. If
23 you save the stipulations, the exhibits stuff, which I'm not even
24 sure we need to do in front of the jury before the government
25 closes. We'll get it done. We'll get it done. We're in recess

1 until two o'clock.

2 MR. KURLAND: Judge, there's a rule of completeness
3 issue and some other issues with respect to the government
4 putting on those excerpts of the -- I would like to opportunity
5 after lunch, before the government formally presents that
6 evidence.

7 THE COURT: Well, all right. I'll talk to you about
8 it. I don't know, when Mr. Harding says excerpts, I think he
9 means just the defendants' speeches.

10 MR. HARDING: That's exactly right.

11 THE COURT: He means an excerpt from the proceedings,
12 not an excerpt of the defendants' statements.

13 MR. HARDING: And we'll make the tape available to Mr.
14 Kurland when they want to put on their case, they can play
15 whatever they want to, Your Honor.

16 MR. KURLAND: But that's not what --

17 THE COURT: I don't intend to admit anything that I
18 said. So from my perspective, the tapes are complete unto
19 themselves if all we're talking about, and that's all I'm talking
20 about, are the statements that the defendants made. I'm not
21 going to permit the jury to hear my admonishments and advice to
22 the jury or any of that.

23 MR. KURLAND: Could we admit into court your ruling?
24 That's a public document.

25 THE COURT: We can talk about that. I don't know about

1 my ruling. I do intend, basically, to tell the ladies and
2 gentlemen of the jury that there's no such thing as a flesh and
3 blood defense. I mean, I realize that's the way it's been
4 referred to. But there's no such thing.

5 MR. KURLAND: I suspect we might want to admit the
6 written, the F. Supp. Opinion, the erudite, brilliant F. Supp.
7 Opinion.

8 THE COURT: No. That won't be admitted. We're in
9 recess until five after two.

10 (Luncheon recess at 12:50 p.m.)

11 THE COURT: Well, Mr. Kurland, good afternoon.

12 MR. KURLAND: Good afternoon, Your Honor. Your Honor,
13 with respect to the modifications, I won't speak for the
14 government. I don't have a problem with any of the
15 interlineations. Mr. Hanlon and I, he can obviously speak for
16 himself. To the second page, we had discussed, the word we used
17 originally was "sometimes." The court changed it to "usually."
18 Mr. Hanlon and I, we both think "often" might be more appropriate
19 there.

20 THE COURT: Okay.

21 MR. KURLAND: In addition to that, Your Honor, one
22 other thing. In anticipation of the cross examination of Special
23 Agent Klas, when the government brought out the tax returns and
24 the years, the tax returns, several of years Mr. Gardner has been
25 incarcerated as a convicted felon. Without mentioning a life

1 without possibility of parole sentence, I believe the door's been
2 opened to elicit that Mr. Gardner was, in fact, convicted and
3 was, was a felon in state prison during several of those years.
4 I won't say life sentence.

5 THE COURT: The request is denied. Maybe he had
6 capital gains. I don't know.

7 MR. KURLAND: But that's a fact issue. But the Court's
8 earlier ruling --

9 THE COURT: But the fact that a person's incarcerated
10 doesn't mean they didn't have income or that they shouldn't have
11 filed an income tax. That's my only point.

12 MR. KURLAND: The Court's earlier ruling he's been
13 incarcerated for three years is basically fair. He's been in
14 constant --

15 THE COURT: He's been in continuous, he's been
16 continuously incarcerated since the date of his arrest.

17 MR. KURLAND: Thank you, Judge.

18 THE COURT: I think Ms. Arrington has been up to no
19 good.

20 MR. HARDING: Again?

21 THE COURT: Apparently, the jurors have requested that
22 they be allowed to come in tomorrow. That's not Ms. Arrington's
23 fault, of course. I'm happy to say yes, except I don't know that
24 we'll have anything for them tomorrow.

25 MR. HARDING: It's becoming increasingly likely, Your

1 Honor.

2 THE COURT: Really? How long is Benson going to be on
3 the stand? A couple hours?

4 MR. HARDING: I would say over an hour on direct, Your
5 Honor.

6 THE COURT: Is he going to be on the stand --

7 MR. HARDING: And I have a feeling that certain people
8 in this room are sharpening their knives for him.

9 THE COURT: All right.

10 MR. COBURN: I think Agent Benson, Detective Benson
11 could take care of himself, Your Honor. I would tell Your Honor
12 that I agree with Mr. Harding personally, I think given the
13 cross. And after that -- he's a case agent. I'm going to be
14 surprised if we get done today.

15 THE COURT: All right. Will you be ready to go on
16 Monday, Ms. Rhodes?

17 MS. RHODES: Your Honor, a couple of weeks ago you
18 indicated that I should have it ready for Wednesday. So I have
19 more people for Wednesday. I have a couple of things for Monday.
20 It also depends on whether, what the situation is with the Coach
21 Lynch stipulation, which Mr. Harding, or the proffer which he's
22 reviewing.

23 There's also our rap expert, who is not available until
24 Wednesday.

25 THE COURT: Could you possibly get the rap expert here

1 earlier in the week?

2 MS. RHODES: It's possible. He's flying somewhere and
3 we were going to talk again today.

4 THE COURT: Okay.

5 MS. RHODES: But I can shoot for that.

6 THE COURT: Okay. I would very much like to avoid a
7 big gap next week. And I could be wrong. But I infer, again, I
8 could be absolutely incorrect on this, but I'm inferring that
9 counsel who subpoenaed fact witnesses probably haven't talked to
10 those people. And the subpoenas have gone out.

11 But as we discussed yesterday, I don't know if they've
12 been served. I don't know if counsel have talked to these
13 witnesses. I don't know if witnesses are going to invoke the
14 Fifth Amendment privilege. I don't know any of that.

15 So I would like, I'm operating on the assumption that
16 despite the informal representations from yesterday, that
17 somebody's going to have a half a day and somebody else is going
18 to have four witnesses, maybe three quarters of a day. As we all
19 know, when push comes to shove and the rubber hits the road, you
20 know, witnesses either don't show up or they're on the stand for
21 only five minutes instead of two and a half hours. And they show
22 up, counsel speaks to them for a moment, and counsel decides not
23 to call them, which is why I didn't require the defense to advise
24 the government of who the likely witnesses will be.

25 I understand there's a risk in that because if the

1 government asks for an adjournment in order to conduct an
2 investigation, I'm probably going to give them that. So I'm
3 trying to avoid gaps next week. And that's why I asked.

4 So if you can arrange to get your rap guy -- it is a
5 guy?

6 MS. RHODES: Yes, it is.

7 THE COURT: Here on either Monday or Tuesday.

8 MS. RHODES: Well, Tuesday we're not in session, right?

9 THE COURT: That's right. Tuesday we're not in
10 session. So we have a gap next week, which is not bad.

11 I guess -- I see. Okay. Wait a minute. I have to
12 recalibrate.

13 MS. RHODES: That's why I was saying Wednesday.

14 THE COURT: Wednesday. So we're okay, then. We're
15 okay. I forgot that we're not in session on Tuesday.

16 So it does look now like the government's going to
17 carry over until tomorrow. Hopefully, the government will
18 conclude by mid morning tomorrow and we'll still have time for
19 motions tomorrow. So I'm expecting to plow into the defense case
20 on Monday. And if we break early on Monday, you know, I won't
21 mind that, but I would like to have a full day on Wednesday.

22 MS. RHODES: Are we still breaking tomorrow at one?

23 THE COURT: Yes. Yes.

24 MR. COBURN: Just in terms of, first of all, you know,
25 the varying order. We have no objection to that at all.

1 THE COURT: Okay.

2 MR. COBURN: Of course. And in terms of avoiding gaps,
3 I just wanted to let Your Honor know, the expert that I had
4 referred to yesterday, the one who's, you know, just for
5 shorthand purposes, the flesh and blood expert, he's in Atlanta
6 and is available on Thursday, if that could work. I just want to
7 let Your Honor know that. He's got some scheduling issues but is
8 prepared to come up on Thursday.

9 THE COURT: He's an attorney?

10 MR. COBURN: He is. Or he's a law student.

11 THE COURT: A law student?

12 MR. COBURN: Yeah. He's written a book about this,
13 apparently.

14 THE COURT: He's written a book about what?

15 MR. COBURN: I was afraid Your Honor was going to ask
16 me that. I wish I had more, you know, kind of a specific
17 recollection of precisely what his CV says. But he's made a
18 study of this kind of, you know, tax protester type defense.

19 THE COURT: Do I have a motion from you on -- I know
20 the government's filed a motion in limine, I think.

21 MR. COBURN: I don't think so. I don't think there has
22 been any motion practice on this at all. That's not their fault.
23 We haven't actually provided --

24 MR. HARDING: We haven't gotten expert notice on this,
25 Your Honor.

1 MR. COBURN: The other thing I just wanted to tell Your
2 Honor really quick, so I don't forget, is Your Honor was kind
3 enough to issue a writ about a week ago for Jamane Johnson. It's
4 returnable the day after, a week from tomorrow, I believe. I
5 just, in connection with our conversation yesterday, I called up
6 Marshal Len in the Marshal Service, who's, Ted Stoler referred me
7 to him. And he said he didn't have a record of it.

8 So I just wanted to let Your Honor know in case -- he's
9 checking now.

10 THE COURT: Wait a minute. Is Goose, Goose is a state
11 prisoner.

12 MR. COBURN: Not Goose. This is a different guy.

13 THE COURT: I'm sorry. Jamane Johnson. Who's --

14 MR. COBURN: Mama.

15 THE COURT: Mama. He's a federal prisoner?

16 MR. KURLAND: State prisoner.

17 MR. COBURN: State prisoner.

18 THE COURT: So why would the marshal care about it?
19 The witness wouldn't go to the marshal.

20 MR. COBURN: That's a good point, Your Honor. Sorry
21 about that. I called the wrong person. I'll check on it again.

22 THE COURT: Okay.

23 MR. HARDING: I do have a pending motion to preclude
24 this rap lyrics expert. And I thought Your Honor ruled yesterday
25 or made a statement to the effect that you were very doubtful you

1 were going to allow a live flesh and blood expert to testify.

2 THE COURT: Yeah. That's certainly true. What's your
3 objection to the rap expert, Mr. Harding?

4 MR. HARDING: It won't aid the jury, Your Honor.
5 There's no, she's not offering this as an expert to interpret the
6 meanings of words, which is what the government had actually at
7 one point thought about calling a rap lyrics expert to testify
8 about what particular words mean in songs. She wants to call an
9 expert to testify about the background and growth of the rap
10 music industry and how people get ahead in the rap music
11 business.

12 And I guess the general point is that people often rise
13 up from nothingness to become great stars in the rap business and
14 that, also, lyrics about violence are very common in the rap
15 music business.

16 THE COURT: I think she's entitled to put that on.
17 I'll look at your motion.

18 MR. HARDING: Please do.

19 THE COURT: I will. But you know, I think I she's
20 entitled to put that on.

21 MS. RHODES: Thank you, Your Honor. On that issue, I
22 am, in light of the testimony today from Agent Klas, I am going
23 to be supplementing my notice to include additional, I think it
24 was in there, about lyrics. I'm going to make it more explicit
25 now. We do intend to ask him about some, these particular

1 lyrics. I'm going to be sending him some of this material. He
2 already has CD's but not the actual written lyrics.

3 THE COURT: All right. Do we have the tape all keyed
4 up and cued up and ready to go?

5 MR. HARDING: Yes, Your Honor.

6 THE COURT: Has it been tested?

7 MR. HARDING: Yes. It's on an old-fashioned
8 reel-to-real tape recorder and I'm going to have to ask that the
9 TFO be permitted to operate it because --

10 THE COURT: Okay. That's fine. Have counsel heard it?

11 MS. RHODES: No.

12 THE COURT: I think you got it play it for counsel, Mr.
13 Harding. Can you turn it on right now?

14 MR. HARDING: We aren't going to get to this today.

15 THE COURT: We're not?

16 MR. HARDING: Not if -- well, we might, but this is
17 going to come at the end of TFO Benson's testimony.

18 THE COURT: Okay. So he could play it during the
19 break.

20 MR. HARDING: Yeah.

21 THE COURT: All right. Let's have the jury, please.

22 I wonder why they wanted to come in tomorrow.

23 MR. MARTIN: Wanted to get home before Thanksgiving.

24 THE COURT: I hope they don't think that just because
25 they come in tomorrow, that the trial's going to be over. I'm

1 afraid they do. And I think I probably gave them that
2 impression. But I'll clarify.

3 MR. MARTIN: It could be over tomorrow, Your Honor.

4 (Jury enters the courtroom.)

5 THE COURT: Good afternoon, ladies and gentlemen of the
6 jury. I hope that I didn't mislead any of you by saying that we
7 may not need you to come in tomorrow in the sense that your not
8 coming in tomorrow might somehow slow down or prolong the case.
9 If you had not come in tomorrow, it really would not have had an
10 impact on getting the case concluded. And I know we're all
11 interested very much in getting the case concluded.

12 In any event, having conferred now with counsel, my
13 optimism about freeing you up tomorrow was unwarranted and so we
14 will be in session tomorrow. I suspect, you will recall that I
15 was only going to keep you until about 1:00, anyway. And I now
16 suspect that we will finish tomorrow with you before 1:00.
17 Indeed, I hope well before 1:00. So you can anticipate being
18 excused before lunch tomorrow.

19 I also hope it wasn't because you didn't want to go to
20 work tomorrow. But in any event, we will be in session, we will
21 be in session tomorrow.

22 And I remind you now that we'll be in session on Monday
23 all day. Tuesday is Veteran's Day, federal holiday. So we won't
24 be in session on Tuesday. We will be in session on Wednesday and
25 Thursday of next week. Thank you very much for your cooperation

1 and your patience. You may proceed, Mr. Lawlor, whenever you're
2 ready.

3 CROSS EXAMINATION

4 BY MR. LAWLOR:

5 Q Thank you, Judge. Agent, how are you?

6 A Good. How are you?

7 Q Good. Thanks. Just a couple quick things, I hope. You
8 showed the jury this report from DLR, which purports to show that
9 Mr. Mitchell -- let me cross out the Social Security number like
10 Mr. Hanlon did. I guess now I'm crossing out the whole thing.
11 So it purports to show that Mr. Mitchell had no income from 1997
12 to 2005?

13 A No. I believe what I testified to was that it purported
14 that he had not earned any unemployment insurance during that
15 time frame.

16 Q What's, he didn't collect on insurance?

17 A No, he didn't earn any credit. I believe if he would have
18 become unemployed, he would not have been able, eligible to
19 receive any benefits from the State.

20 Q Okay. And then this shows that there was no income tax
21 filings the years '97 through 2004? Income tax filings, right?

22 A 2000 was not listed there.

23 Q Okay. '97, every year through 2004 save the year 2000?

24 A That's correct.

25 Q But you're aware of a couple things. Number one, that Mr.

1 Mitchell spent some of that time period away in college, right?

2 A Yes.

3 Q Okay. '97 and '98 he was enrolled at two different
4 colleges, right?

5 A Yes.

6 Q And you're aware of the fact that he work at the Hickey
7 School for sometime, right?

8 A I've heard testimony of that.

9 Q Okay. Let me show you what's been marked as Government's
10 Exhibit HS-1. You see that?

11 A Yes.

12 Q Okay. Let me take it out a little bit. That's the
13 certification on Page One. Have you seen this before, I should
14 ask you?

15 A No, I don't believe I have.

16 Q Okay. This indicates, though, that your colleague, Mr.
17 Benson, sent a subpoena to the Hickey School, right?

18 A I don't see any reference to a subpoena on that document
19 you're showing me.

20 Q Okay. He requested documents, should I say, then, from the
21 Hickey School?

22 A It appears so, yes.

23 Q Perhaps I'll ask Trooper Benson about Mr. Mitchell's
24 employment at the Hickey School.

25 Now, concerning the lack of record. I mean, you're

1 aware of the fact that people are often times employed but fail
2 to file tax returns, right?

3 A I know that people sometimes don't file tax returns, yes.

4 Q Okay. You're employed by the DEA, right?

5 A No. ATF.

6 Q ATF. I'm sorry. You get a pay check, right?

7 A Yes, I do.

8 Q Okay. And the IRS makes it easy on your life by taking the
9 taxes out for you, right?

10 A Yes.

11 Q To make sure that you don't decide that you don't want to
12 pay your taxes otherwise?

13 A I honestly report what I earn.

14 Q Of course. Of course you do. But one thing doesn't
15 necessarily go with the other is my question, right?

16 A That's correct.

17 Q Just because you didn't file tax returns doesn't mean that
18 you weren't employed, right?

19 A That could be true.

20 Q And you're aware of the fact, are you not, that Mr. Mitchell
21 was arrested on April 1st, 2002, right?

22 A I'm not certain of the date.

23 Q You're aware that he was arrested thereabouts?

24 A Yes.

25 Q And he's been in custody continuously since that date, is

1 that correct?

2 A Yes, I believe so.

3 Q Okay. Oh, and then the records you showed from Shakedown.
4 That was a company that was registered with the State of
5 Maryland?

6 A That's correct.

7 Q Formally registered as a business entity with the State of
8 Maryland?

9 A Yes.

10 Q Okay. And that, can you infer from that that the filing of
11 those documents, the awareness of those documents may have
12 required the assistance of even an attorney to file those?

13 A No, I don't believe I could, I don't believe that to be.

14 Q You don't believe that to be the case?

15 A I really couldn't speak on that.

16 Q Okay. But in any event, that's something that you would
17 file with the state to sort of formalize the business, right?

18 A Yeah. I believe I've seen those filed before without an
19 attorney.

20 Q Okay. But it's a public record for anybody out there to see
21 that this is a legitimate entity, right?

22 A It's a public record filed as an entity in the State of
23 Maryland, yes.

24 Q Thank you. No further questions.

25 CROSS EXAMINATION

1 BY MR. MARTIN:

2 Q Good afternoon, Special Agent Klas.

3 A Good afternoon.

4 Q You've been sitting here, as the judge pointed out earlier,
5 for the entire trial, correct?

6 A Yes.

7 Q You are aware, are you not, that the evidence in this case
8 is that Mr. McCaffity was killed with a .357 or a .38, I think
9 it's referred to as a .38/.357?

10 A I don't recall.

11 Q You're not aware of that?

12 A I don't recall right offhand. It sounds correct but --

13 Q Okay. There's a reference this morning that you, you were
14 asked about in one of these rap lyrics that were seized from Mr.
15 Harris's house, to a Chris D?

16 A Yes.

17 Q And I think you testified that you believe that to be a
18 reference to Chris Dobropolski?

19 A Yes, I do.

20 Q Who testified here in this trial, right?

21 A Yes.

22 Q And you're aware, because you sat here during this trial and
23 because you're the case agent or one of the case agents, that Mr.
24 Harris met Mr. Dobropolski when he was locked up in August of
25 2002, is that right?

1 A I believe he met him when he was locked up. I don't recall
2 the date.

3 Q Okay. And at the time that Mr. Harris met Mr. Dobropolski,
4 Mr. Mitchell was already locked up, wasn't he?

5 A I don't recall.

6 Q You don't recall that, either?

7 A I recall testimony about Mr. Mitchell being incarcerated
8 around that same time frame.

9 Q And actually, Mr. Mitchell hasn't been out of jail since
10 then, has he?

11 A I don't think so, but I don't know.

12 Q Okay. And the reference you were asked about in one of the
13 other rap lyrics this morning was Bo and Weaze on lockdown now?

14 A Yes.

15 Q That's a reference to those two individuals being locked up,
16 isn't it?

17 A Yes.

18 Q Okay. Now, the Llama gun, is that the .45 that you were
19 shown this morning?

20 A Yes.

21 Q You didn't submit that to the lab for fingerprints, did you?

22 A No. Another agent at my direction submitted that for
23 fingerprints.

24 Q Were there any prints obtained?

25 A No. There were no prints found on the firearm.

1 Q Mr. Harris's prints weren't on there, were they?

2 A No one's fingerprints were on there.

3 Q And you didn't submit to it the lab for DNA, did you?

4 A No. It wasn't our policy to submit firearms at that time
5 for DNA.

6 Q Oh, at that time?

7 A I don't even know now if it's our policy to do that.

8 Q So back then it wasn't your policy and you don't know
9 whether it's your policy now?

10 A That's correct.

11 Q But regardless of whether it's your policy, you just didn't
12 do it, right?

13 A It wasn't done. I don't believe our lab had the
14 capabilities at that time.

15 Q Well, there are other labs that do, aren't there?

16 A You asked me about our lab and how I submitted it.

17 Q Well, what about the other people you worked with in this
18 case, like the Baltimore City Police Department?

19 A The firearm never went to them for DNA analysis.

20 Q You've heard from evidence in this case that they have the
21 ability to do that, though, haven't you?

22 A Yes.

23 Q Okay. Now, you were referred to a line in one of these rap
24 songs this morning and you said it was a reference to Woody?

25 A Yes.

1 Q And that Woody was spelled W-H-O-O-D-I, isn't that right?

2 A I believe that was the spelling.

3 Q Okay. But pronounced it Woody instead of Wodey, isn't that
4 right?

5 A I pronounced it Woody, yes.

6 Q Have you ever heard of the rap artist Juvenile?

7 A I believe so.

8 Q Are you aware that juvenile uses the word Whoodi in his
9 songs, and in particular uses it in a song called Set It Off, on
10 a CD called Project English?

11 A No, I'm not.

12 Q W-H-O-O-D-I. That's how it was spelled, isn't it?

13 A I am not certain of that.

14 Q Special Agent Klas, you testified this morning there were,
15 there's a whole lot of, bunch of documents in those notebooks
16 that you seized from Seamon Avenue, correct?

17 A Yes.

18 Q And let me put one of these documents up on the DOAR. You
19 see this document here, sir?

20 A Yes.

21 Q And it's, it's called Exhibit N-45 Number 40, correct?

22 A Yes.

23 Q This is one of the documents that you seized that day, isn't
24 it?

25 A Yes, it would have been.

1 Q You've seen this before in going through those documents,
2 correct?

3 A I don't recall if it --

4 Q You don't recall. But you recognize it as one you would
5 have seized?

6 A Yes.

7 Q And it purports to be an exclusive production agreement
8 between someone who would be an artist and Shakedown
9 Entertainment, correct?

10 A Yes, that's what it appears to be.

11 Q Okay. Let me show you another document that was -- this is
12 from N-45, Number 11. Do you remember seeing this?

13 A It looks like it's from the documents. I don't recall it
14 offhand.

15 Q It looks just like the documents that you've seized, doesn't
16 it?

17 A Yes.

18 Q The same handwriting, too?

19 A Same handwriting, marked as such, yes.

20 Q So, and this is a document that you seized from Seamon
21 Avenue that day, correct?

22 A Yes, it would have been.

23 Q Now, Your Honor, we didn't have any questions this morning
24 when he was on direct about the jailhouse, the lockup. He was
25 there. I would like to ask him about that.

1 THE COURT: You may.

2 MR. HANLON: No objection to that, Your Honor.

3 BY MR. MARTIN:

4 Q Special Agent Klas, first I have a question. You
5 participated in an interview, did you not, of Police Officer
6 Alvin Barnes?

7 A Yes.

8 Q And Mr., or Officer Barnes was one of the officers who
9 searched the Amity Street residence where Mr. Harris lived with
10 his mother and his sister?

11 A Yes.

12 Q In fact, he was the officer in charge, wasn't he?

13 A I don't think --

14 Q I might have misspoken. He was, he was the representative
15 who was called to this trial to testify about that search?

16 A Yeah, that is correct.

17 Q And when you interviewed him that day, you wrote a report,
18 is that right?

19 A Yes, I believe I did.

20 Q And in that report, the last line in your report says that
21 he stated to you that --

22 MR. HANLON: Objection, Your Honor.

23 Q -- he says that Mr.

24 MR. HANLON: Objection.

25 THE COURT: Just a moment. Just a moment. The jury

1 will remember that a question from a counsel is not evidence. Go
2 ahead, Mr. Martin.

3 BY MR. MARTIN:

4 Q Thank you, Your Honor. You wrote in your report, did you
5 not, that Officer Barnes told you that Harris acknowledged that
6 the narcotics found inside the Amity Street residence belonged to
7 him, didn't you?

8 MR. HANLON: Objection, Your Honor.

9 THE COURT: I assume he can look at his report.

10 Q He can, Your Honor. Should I put it on the DOAR or should I
11 just take it to him?

12 THE COURT: Why don't you take it him, let him look at
13 it.

14 THE WITNESS: Yes. It says Harris once again
15 acknowledged that the narcotics found inside was his.

16 BY MR. MARTIN:

17 Q And that's your report, correct?

18 A Yes, I authored this report.

19 Q And he also told you, did he not, on the last page, that, he
20 also stated, Harris stated that he sold the narcotics in the Park
21 Heights area and not in the community where the apartment was
22 located?

23 A Yes.

24 Q Correct?

25 A That's correct.

1 Q Now, before you interviewed Officer Barnes, you had read the
2 Statement of Charges and the other documents associated with that
3 arrest, hadn't you?

4 A I don't believe that I have, no.

5 Q You don't believe that you had?

6 A No.

7 Q And you're not aware, then, that he once stated that before?

8 MR. HANLON: Objection, Your Honor.

9 THE COURT: I'm sorry. I'm not following the question.

10 Q My question was, Your Honor -- I'll restate it. You're not
11 aware that prior to his meeting with you, when he supposedly said
12 this, that he had never once stated that in any of the other
13 papers that he filed in connection with this arrest and this
14 search?

15 MR. HANLON: Objection.

16 THE COURT: The objection's sustained.

17 Q Now, on June 10th of 2005, I think it is -- you recall that
18 date?

19 A I believe so.

20 Q Now, you were informed that day, were you not, that Rodney
21 Hayes had been arrested?

22 A Yes.

23 Q And he had been arrested on a warrant, in fact, that you had
24 obtained. Not on that warrant. He had been arrested for a
25 narcotics violation, correct?

1 A I believe he'd been for both reasons. And it wasn't a
2 warrant that I obtained. It was a warrant that another ATF agent
3 had obtained.

4 Q Okay. So let me clear that up. For both reasons you mean
5 both because he was arrested with controlled dangerous substances
6 and because the officer who arrested him also knew that there was
7 a warrant, federal warrant outstanding for him for this
8 ammunition?

9 A That's correct.

10 Q And you learned about that about 3:00 on the Friday
11 afternoon?

12 A Approximately three.

13 Q Okay. And you then made arrangements to bring him to
14 federal court on Monday morning?

15 A Yeah. I started making arrangements, correct.

16 Q And you did that on Friday afternoon?

17 A Friday afternoon and I think into the weekend, actually, as
18 events unfolded.

19 Q You didn't go talk to him over the weekend, though, did you?

20 A No, I did not.

21 Q And your plan was, when you brought him here Monday, that
22 you would talk to him as well, isn't that right?

23 A No. My plan was to bring him to his initial appearance.

24 Q So you had no plan about talking to him? You didn't bring
25 him here to debrief him or to interview him?

1 A No. My role is to bring him in for the outstanding warrant.

2 Q Okay. And you informed Mr. Harding that you were bringing
3 him here at some point in time, didn't you?

4 A Yes.

5 Q And did you inform him on Friday?

6 A Yes. I would have contacted Mr. Harding, let him know that
7 he had been picked up by the city and that we were planning on
8 bringing him over on Monday.

9 Q Because he was always, already somebody who had been a
10 witness in this case and in front of the grand jury in this case,
11 correct?

12 A Yeah. I learned that, yes.

13 Q And Mr. Harding was in charge of the case. And so you would
14 have told him you were bringing him in on Monday?

15 A Yeah.

16 Q But your plan wasn't to talk to him on Monday?

17 A No. My plan was just to bring him into court.

18 Q And when you got him to court, you took him to the lockup?

19 A When I got him to the courthouse, I brought him up through
20 the marshal's secured area, yes.

21 Q And you took him to the secured area and they took him for
22 processing?

23 A That's correct.

24 Q All right. And then at some point you entered the locked
25 door into the area of the lockup, correct?

1 A You mean after the assault occurred?

2 Q No. Before.

3 A No. You can't enter that area.

4 Q You were not in there before?

5 A The secured area?

6 Q Yes.

7 A No.

8 Q So you were not in the hallway in the secured area when Mr.
9 Hayes was brought in there and taken down to the cell?

10 A That's correct, I was not.

11 Q Your Honor, I think I'm going to have to play the video.
12 Maybe my --

13 THE COURT: Yeah. Maybe you need to clarify.

14 Q Maybe my question isn't clear.

15 THE COURT: Yeah.

16 Q There's a door you go through that I couldn't get through
17 but you can as an agent. But it's not the cell block.

18 THE COURT: Do you mean if he's bringing a detainee in
19 there?

20 Q Yes.

21 A I think you may be, I could maybe draw something for you if
22 you'd like, but I think maybe there's some confusion.

23 Q I'm sorry. You could draw something for me?

24 A Yeah. You're asking me where I was standing and something.

25 Q Yes. Where were you standing when the altercation took

1 place?

2 A Outside the Fingerprint Processing Room.

3 Q Okay.

4 A And in front of me would have been the door that leads back
5 down to the hallway where the, and then bends around to the right
6 where the inmates were locked up. So I was behind the locked
7 door that I could not, never could --

8 Q All right. Now, I misspoke then. So there's a door here
9 and you were down the hallway. You could see through it. It was
10 a --

11 A I think there's a little -- no, I could not.

12 Q But you were up this way. There's a locked door there and
13 then the lockup part is down here, down below?

14 A I don't think I'm really following your hand gestures
15 comfortably enough to testify.

16 Q Maybe I interrupted you. Why don't you try it? You can do
17 it better than I can. I have seen a film and you were shown this
18 film when you testified in the grand jury. Do you remember
19 looking at that film?

20 A Yeah. Yes. I've seen -- but I'm not sure if you know the
21 camera angles I was looking at though, or which cameras.

22 Q There's a view from outside the lockup looking up the
23 hallway where you are. The locked door is between you and the
24 block?

25 A You couldn't see me when I was behind the locked door. I

1 can tell you that. I'm fairly certain.

2 Q Your Honor, then I'm going to have to play the tape because
3 I can see him.

4 THE COURT: I'm not convinced you need to play the
5 tape. Of course, if you want to play it, you can play it. He
6 says he was at the fingerprint --

7 A Until the alarm, until the marshals finally came and opened
8 the door where I could then get a little bit past that door. But
9 I never went all the way down to the lockup in front of the
10 prisoners.

11 Q No, I didn't say that, though.

12 A Okay.

13 Q But while you were in that first area behind the locked
14 door --

15 A By the fingerprint area?

16 Q Yes. The marshals brought Mr. Hayes down past you, took him
17 through the locked door, and put him into the lockup, put him
18 into the cell?

19 A I handed him off or the marshals left me behind. I was
20 standing there right with him. They shut the door behind me and
21 then they proceeded down the hallway. I could see from the
22 camera that they then turned and went into the cell but I
23 couldn't see that.

24 Q You couldn't see in the cell?

25 A No.

1 Q But you could see up to the point where they turned and went
2 into the cell?

3 A I wasn't looking.

4 THE COURT: If you had been looking, you could have
5 seen?

6 A I think there's a window there. I think there is a small
7 glass window, I believe.

8 Q And at the point in time before Mr. Hayes was brought past
9 you and taken through the locked door --

10 THE COURT: I'm sorry, Mr. Martin, to interrupt. I
11 think what the witness said is that Hayes wasn't brought past
12 him, that he handed Hayes off to the marshals.

13 Q Your Honor, the film shows otherwise. I'm sorry. But it
14 does.

15 THE COURT: Well, not the film we saw.

16 Q No. There's more parts to that film.

17 THE COURT: But we haven't seen that part.

18 MR. MARTIN: Well, I have.

19 THE COURT: All right. So you want to play some
20 portion of the film that the jury hasn't seen?

21 MR. MARTIN: Yes, Your Honor, I would.

22 THE COURT: Okay. Is it available? Is it here?

23 MR. MARTIN: Mr. Flannery has it right there on his
24 computer and he's going to try to hook it up. It might take a
25 minute or so to get it hooked up. I'm sorry for the confusion.

1 THE COURT: All right. That's all right.

2 MR. MARTIN: I forgot there are different views and
3 we've seen one camera angle and there are other camera angles. I
4 think that's what the agent was trying to tell me, anyway.

5 THE WITNESS: Yeah. And I haven't seen them all in
6 years so it's been a while.

7 MR. MARTIN: And we've tested this and it does work.
8 Or at least it did the last time, Your Honor.

9 THE COURT: I think that's the best you can say. It's
10 all on the same government exhibit, though, I take it?

11 MR. MARTIN: Yes, sir.

12 THE COURT: Okay. Just a different perspective or
13 different view, different camera.

14 MR. MARTIN: I wouldn't know how to find it myself,
15 Your Honor.

16 THE COURT: Okay. Can you see it, Agent, okay?

17 (Tape playing.)

18 THE WITNESS: Yeah. But I'm not certain about the --

19 THE COURT: Well, that's all right. He's going to play
20 something for you to look at.

21 THE WITNESS: All right.

22 MR. MARTIN: Can I point to this and can anybody see
23 it?

24 THE COURT: I don't think that will work. Try it.

25 BY MR. MARTIN:

1 Q It won't work here. You see that, Agent?

2 A The DOAR?

3 Q Yes. That's the locked door you're talking about, is it
4 not?

5 A It looks like the whole door you can see through. I don't
6 know if there's another door in front of that that's sometimes
7 closed. That's not how I remember it.

8 Q There looks to be another doorway way up at the end.

9 A Yeah. But that's, that may be the area there. That may be.

10 Q This might be why we were confused. You're talking about
11 that door instead of this one.

12 A Yeah.

13 Q But this is a locked door right here that we're looking at?
14 Soon as this thing starts working. There you go. That was you
15 just crossed in the film, wasn't it?

16 A I can't tell you that.

17 Q Can we back it up? Do you remember what you had on that
18 day?

19 A No.

20 Q Okay. Is that you right there? That's you talking on your
21 cell phone, isn't it?

22 A No, I can't tell you that.

23 Q Back it up again. And isn't this Mr. Hayes being brought by
24 right there?

25 A No. I can't tell you that.

1 Q Wait until we get -- that's Mr. Hayes, isn't it?

2 A Yeah. That may be Mr. Hayes there, yeah.

3 Q Now? That's Mr. Hayes being brought out, isn't it?

4 A Yes.

5 Q And that's you right there, isn't it?

6 A Yes.

7 Q So that was you further up the hall earlier, wasn't it?

8 A It likely was but I can't tell with absolutely certainly. I
9 can tell you that's me, though.

10 Q Do you remember when you were out there in that hallway
11 before Mr. Hayes was brought past you? Do you remember that you
12 were talking on your cell phone to Mr. Harding?

13 A I think when I was -- well, the picture's gone.

14 Q We're going to get it back.

15 A All right. Yeah. It's my recollection that when the alarm
16 was sounded, I believe I was on the phone with Mr. Harding.

17 Q Yes. And you testified in the grand jury to that effect.
18 Do you remember that?

19 A Yes.

20 Q So you were talking to Mr. Harding before Mr. Hayes was
21 brought by you and set into the cell?

22 A Yes, that could be correct.

23 Q Thank you.

24 A Or actually, after Mr. Hayes went by me, I was off camera.

25 Q I said before Mr. Hayes was brought by you, you were talking

1 on your cell phone to Mr. Harding?

2 A I don't know.

3 Q Let me take you back to the beginning and let me show you
4 your grand jury testimony as well. See if that refreshes your
5 recollection. Do you remember viewing this video when you were
6 in the grand jury?

7 A I remember we had four or five different angles and we were
8 flipping around from one angle to the other. I don't know what I
9 saw at that time.

10 Q And do you remember telling Mr. Harding in the grand jury
11 that you were back where the marshals have their fingerprinting
12 services going on and there's a screen door dividing myself from
13 the hallway where the altercation took place?

14 A That sounds correct.

15 Q And that's what we've been looking at here?

16 A Yeah. Now --

17 Q So you were on other side of that screen door and this
18 camera that was looking up that hall toward you could pick you
19 up?

20 A Yes, it appears so.

21 Q And do you remember Mr. Harding asking you, when you were on
22 the cell phone talking to me at that time, is that right? And
23 you said, Yes, I believe so, yes?

24 A I said, Yes, I believe so, yes?

25 Q Yes. Do you remember that?

1 A That, I believe I was talking to Mr. Harding at the time.

2 Q Now if you'll take a look at this video and tell me whether
3 you believe this is you when it shows up here talking on a cell
4 phone. Right there.

5 A Yes. I believe, yeah. Looks like I am on the cell phone.

6 Q And you would have been telling Mr. Harding that you had Mr.
7 Hayes in the lockup, correct?

8 A I would have been telling Mr. Harding Mr. Hayes is in the
9 lockup and that he should be prepared for initial appearance
10 later on.

11 Q Because that's what you were doing. You were taking him for
12 initial appearance?

13 A That's correct.

14 Q And your testimony is you didn't bring him there to
15 interview him?

16 A That's correct.

17 Q Just bear with me for one second, Your Honor. Agent Klas,
18 you're aware, are you not, from the documents you seized from Mr.
19 Harris's home and from being here in court that Mr. Harris is an
20 epileptic and sometimes had violent seizures?

21 A I've heard testimony in this trial to that effect.

22 Q You were actually here in court when he had one, weren't
23 you?

24 A No, I was not.

25 Q That's all I have, Your Honor. Thank you.

CROSS EXAMINATION

BY MR. PYNE:

Q Good afternoon, Agent Klas. How are you?

A Good afternoon. Good, thank you.

Q I believe your earlier testimony was that, that between the red notebook and the black notebook there were a hundred or so pages of these rap lyrics, is that correct?

A Yes. As an approximation.

Q And none of them were dated?

A I can't say that with all certainty but I don't recall any dates on those rap lyrics.

Q Okay. So for the vast majority, anyhow, we have no idea when those lyrics were written?

A That would be correct.

Q And did you or one of your agents read through every one of those pages of lyrics?

A I did not read through every single one of those pages of lyrics but I believe that had been done by, but not by myself.

Q Between you and other agents that were assisting you, all those lyrics were read through and reviewed?

A Those lyrics weren't in my custody. They were in DEA custody so I cannot be certain when or who read through all of them.

Q Is it fair to say that any time the name "Weaze" appeared in any of those pages of lyrics, it was pulled out and was presented

1 before the jury either today or yesterday? Or I guess it was all
2 today.

3 A I can't say that with all certainty. There could have been
4 some missed.

5 Q So you're not sure whether or not the jury saw every single
6 time the name "Weaze" appeared in those hundred pages or so of
7 lyrics?

8 A I can't be absolutely positive, no.

9 Q Okay. Did you ever run across the name "Wayne" in any of
10 those lyrics?

11 A I don't recall personally running across the name "Wayne."

12 Q Okay. And it's your belief that all those lyrics were
13 written by Mr. Harris?

14 A Not every single one of those, no. Most of them were signed
15 by Harris or had Harris's handwriting. A few of them appeared to
16 be written by, in Mr. Harris's custody and possession, but I
17 didn't think they belonged or were written by Mr. Harris.

18 Q But in the songs that you reviewed that were written by Mr.
19 Harris, you never saw the name "Wayne", is that fair to say?

20 A I don't, I don't believe I read "Wayne", the name "Wayne" in
21 court, no.

22 Q Okay. And the only time you saw the name close to "Wayne"
23 was this name "Weaze" that you saw?

24 A I've seen the name "Weaze."

25 Q Okay. And you're aware, are you not, that in regards to the

1 income tax records or lack of income tax records, that Mr. Martin
2 was incarcerated from June 18th of 1999 through October 29th of
3 2001?

4 A I'm sorry. I don't know the dates of his incarceration.

5 Q Okay. But you are aware that he was incarcerated on a
6 federal gun case?

7 A No.

8 Q You're not aware of that?

9 A No.

10 Q Were you aware that he was in the Volunteers of America from
11 October 29th of 2001 through March 7th of 2002?

12 A No.

13 Q Were you aware that he was arrested on April 17th of 2002
14 and has been incarcerated since that time?

15 A I believe so.

16 Q Okay. And on December the 5th of 2000, when Shakedown
17 Enterprises was incorporated, that Mr. Martin was incarcerated
18 during that period of time?

19 A I can't say.

20 Q Okay. That's all I have, Your Honor. Thank you.

21 CROSS EXAMINATION

22 BY MR. KURLAND:

23 Q Good afternoon, Special Agent Klas.

24 A Good afternoon.

25 Q I just have a few questions. Okay. Just -- okay. You've

1 already testified before the jury that you are an ATF agent?

2 A That's correct.

3 Q And you're one of the case agents in this case and you've
4 been present for, I think since the beginning of trial every,
5 every day of trial, is that correct?

6 A I've been assisting in this case and I've been present every
7 day of trial.

8 Q And you might have gone out for a minute or two to get a
9 witness or something. But for the most part you've been here
10 from start to finish?

11 A That's true, yes.

12 Q Okay. Now, is it correct that your involvement or the ATF's
13 involvement in this case comes about because of the fact that
14 there are firearms involved and that there is some interstate
15 commerce element with respect to firearms moving in interstate
16 commerce, correct?

17 A We were asked for assistance in prosecuting and
18 investigating this case and --

19 Q Sure. But if this were a knife case, if there were no guns
20 involved, no ammunition involved, I take it the ATF would not
21 have gotten involved?

22 A I cannot say that with certainty at all.

23 Q Okay. Well, you were in court a couple of days ago when one
24 of the other ATF agents testified about the interstate element
25 with respect to the, the transport of firearms across state

1 lines?

2 A I was in -- Special Agent Boroshok?

3 Q Sure.

4 A I was here for most of his testimony, yes.

5 Q And with respect, and you recall his testimony being about
6 guns that either were manufactured out of the United States and
7 came into the United States or guns or ammunition that had been
8 manufactured originally some place outside of Maryland?

9 A Yes.

10 Q They came into Maryland?

11 A Yes.

12 Q So the interstate nexus that the ATF focuses on isn't
13 related to whether the guns do something good or bad, it's just
14 the crossing of the state line or the international border,
15 that's correct?

16 A I'm sorry. I'm just trying to digest. Rephrase that
17 question.

18 Q Let me ask it this way. Putting aside whether or not it
19 would ever yield a prosecution, if a gun was manufactured, say,
20 in Connecticut -- a lot firearms are manufactured in Connecticut,
21 correct?

22 A Yes.

23 Q And that gun ends up in Maryland?

24 A Yes.

25 Q And that gun is used solely by law enforcement at a shooting

1 range.

2 A Okay.

3 Q That gun has traveled in interstate commerce?

4 A Yes, it would have.

5 Q So it has nothing to do with whether the gun ends up doing
6 something criminal or not. The traveling in interstate
7 commerce --

8 A It stands alone.

9 Q Okay. All right. Now, with respect to that, isn't it
10 correct that on January 23rd -- I take that back -- January 22nd,
11 2004, you were notified that you were going to assist in a joint
12 investigation between the Baltimore homicide detectives, the DEA
13 REDRUM task force, concerning the federal prosecution of these
14 defendants, these four defendants as belonging to the Mitchell
15 criminal organization?

16 A I'm not certain about the date but --

17 Q I have your memo. Would it refresh your memory if I brought
18 you your memo dated January 22nd, 2004?

19 A Sure. I may not need it, but you could bring it if you
20 like.

21 Q It's a matter of whether you recall or not.

22 A Well, if it's a date that you want to put emphasis on, then
23 I would like to take a look at it.

24 Q Can I approach the witness?

25 THE COURT: Is it the date you care about?

1 MR. HANLON: Your Honor, the government will stipulate
2 to the date.

3 THE COURT: Fine.

4 Q But you were asked to partake in a criminal investigation of
5 the Mitchell criminal organization, correct?

6 A I was asked to participate in an investigation and
7 prosecution of these defendants before today.

8 Q Isn't it true, though, that your report, the title of the
9 investigation prepared by you as submitted by Brian E. Klas with
10 something that purports to be your signature, says the type of
11 investigation, Mitchell criminal organization. Would you like me
12 to bring the document up so you can see that?

13 A No. I think your question was different. I titled that. I
14 titled the investigation that name. No one told me to.

15 Q But you made it up. Are you the source of the name, the
16 Mitchell criminal organization?

17 A I have no way of answering, of knowing that.

18 Q Okay. But it's your testimony that you just typed that in?

19 A Yes.

20 Q In the paper?

21 A Mr. Mitchell was the first, happened to be the first named
22 defendant in the indictment and I had to call the, these
23 gentlemen by one name that was easily conveyed to others. And
24 that's the name that was chosen.

25 Q Okay. And your testimony is that you chose that name? All

1 right?

2 A I chose that name as ATF.

3 Q But that name shows up, say, in the other ATF agents'
4 reports as well?

5 A Once I create the original document, it will, it will be on
6 the template, then, for the others to use.

7 Q All right. On that, in that same document, in the narrative
8 portion, it says that the U.S. Attorney for the Central District
9 of Maryland contacted ATF Group Three, requested investigative
10 assistance in the federal prosecution of Willie Edward Mitchell,
11 Shelton Lee Harris, Shelly Wayne Martin, Shawn Earl Gardner, all
12 of which were members of the Mitchell narcotics and armed robbery
13 organization, which operated in Baltimore City and Baltimore
14 County, Maryland. So that's in the narrative.

15 So it's still your testimony that that name, you just
16 picked because it was the first name listed?

17 A The Mitchell organization?

18 Q Yes.

19 A Yes.

20 Q Okay. The U.S. Attorney's Office, your report says that
21 they contacted you and it's your testimony that the U.S.
22 Attorney's office did not give you the name "the Mitchell
23 organization?"

24 A No, they did not.

25 Q Okay. All right. Now, at some point -- at the end of that

1 document it indicates that the investigation is continuing. That
2 seems to be a common last line in an ongoing investigation,
3 correct?

4 A For ATF, anyways, yeah. Yes.

5 Q Okay. Now, is there still an ongoing investigation of the
6 Mitchell criminal organization?

7 A If you're asking me, yes. Yes. Until the outcome of this
8 court proceedings, the investigation is still open.

9 Q So there is no ongoing investigation of the
10 Randallstown/Park Heights organization?

11 A It's the same organization.

12 Q It's the same organization. Okay. When was the last time,
13 to best of your recollection, in any of your reports you used the
14 name "Mitchell criminal organization?"

15 A I've never stopped using that in any of my reports.

16 Q You've never stopped using that in any of your reports. Do
17 you, is it your understanding that the enterprise that has been
18 alleged in this case is the Mitchell criminal organization?

19 MR. HANLON: Objection, Your Honor.

20 THE COURT: Overruled. You may answer.

21 A Is it -- could you repeat the question, please?

22 Q I have to ask the court reporter to read it back. Is it
23 your understanding -- well, strike that. The prosecution that is
24 going on right now, is this a prosecution of the Mitchell
25 criminal organization?

1 A The name, as far as I'm concerned, is irrelevant.

2 Q That's not my question, Your Honor. I ask that be stricken.

3 MR. HANLON: Objection.

4 THE COURT: The request is denied.

5 Q Well, that's not my question. Regardless of whether --

6 A If my bosses from ATF, they could ask me how the Mitchell
7 criminal investigation, how the trial's going.

8 Q Special Agent Klas, I appreciate that. But that's not the
9 question.

10 A I'm sorry. I was trying to answer that the best I can.

11 Q I understand. I appreciate that. My question is, so is
12 this a prosecution in your mind as one of the case agents of the
13 Mitchell criminal organization?

14 MS. RHODES: Objection, Your Honor.

15 A Mitchell, et al.

16 THE COURT: Overruled.

17 A Mitchell, et al.

18 Q And it's your testimony that, that the name the
19 Randallstown/Park Heights organization, where did that come from?
20 Have you ever heard that name before?

21 A Yes, I have.

22 Q Okay. Now, that's not the first name in any indictment?

23 MR. HANLON: Objection, Your Honor.

24 THE COURT: Sustained.

25 BY MR. KURLAND:

1 Q What is your understanding of where that name came from?

2 A If I'm allowed to answer that question.

3 MR. HANLON: No objection to the question, Your Honor.

4 A I believe that was in an indictment, in a superseding
5 indictment.

6 Q Okay. So, but the Mitchell criminal organization is not in
7 the operative -- too fancy of a word. The Mitchell criminal
8 organization, that was the name, that's no longer the name in the
9 indictment. Is that your testimony?

10 MR. HANLON: Objection, Your Honor.

11 THE COURT: Sustained.

12 Q Well, Special Agent Klas, your last answer was that -- was
13 what about the, the Randallstown/Park Heights organization is
14 what, in your opinion? Or what do you understand?

15 A I believe it's the same as Mitchell organization, et al.

16 MR. HANLON: Objection. Asked and answered, Your
17 Honor.

18 THE COURT: The objection's sustained.

19 Q Now, as part of your investigation you weren't asked to --
20 you were asked to investigate these four defendants, correct?

21 MS. RHODES: Objection, Your Honor.

22 THE COURT: Sustained.

23 Q Were you, Officer, I mean Special Agent Klas, were you asked
24 to find any other members of the Mitchell criminal organization?

25 MS. RHODES: Objection.

1 THE COURT: Sustained.

2 Q Have you ever been asked to, as part of the investigation,
3 to identify all the members of the Randallstown/Park Heights
4 organization?

5 A I've been asked to gather evidence concerning these criminal
6 activities that these defendants have participated in. In doing
7 so, I followed numerous leads and met numerous individuals. Have
8 I ever specifically been asked to find other members of the
9 Randallstown/Park Heights organization?

10 Q Brought it to the attention of the prosecutors to have them
11 be prosecuted --

12 THE COURT: I don't think he was finished answering the
13 question, Mr. Kurland. Perhaps he was.

14 THE WITNESS: The answer would have been, to answer you
15 specifically, that question, I have never been asked to do that,
16 no.

17 BY MR. KURLAND:

18 Q Okay. I'll move on to a different topic. Okay. With
19 respect to the testimony that you gave on direct examination
20 concerning the, the unemployment insurance records and the tax
21 records --

22 A Yes.

23 Q Okay. You're aware, are you not, that Mr. Gardner has been
24 continuously incarcerated since June, 2002, to the present time?

25 A Yes.

1 Q Okay. And that would, of course, have some effect as to
2 whether or not he's filed tax returns or not, wouldn't it?

3 A I really don't know.

4 Q Okay. You're not an IRS agent?

5 A Yeah. I don't know what the regulations are. I'm sorry.

6 Q That's fair enough. Also, with respect to that, with
7 respect to the effect that he's been continuously incarcerated
8 since 2002, you were in court when Detective Niedermeier
9 testified?

10 A I'm sure for parts of his testimony I definitely was.

11 Q And do you recall, you were also in court when he testified
12 that when he had to get a blood sample from Mr. Gardner in late
13 2002, he had to actually get permission from the warden at Jessup
14 state prison? Do you recall that testimony?

15 A Do I recall that? Yes. I believe so, yes.

16 Q I just have a couple more questions. Special Agent Klas,
17 you were asked a couple of questions, I believe from Mr. Martin,
18 concerning some of the issues with respect to your grand jury
19 appearance.

20 A Yes.

21 Q When you were before the grand jury, there is no judge or
22 magistrate before the grand jury, is there?

23 A No.

24 Q The prosecutor basically controls what goes on and asks the
25 questions?

1 A The jurors can ask questions, also, but it's just the
2 prosecutor, the jurors, and the person testifying --

3 Q And with respect --

4 A And the court reporter.

5 Q I'm sorry. I didn't mean to speak over you. That's a bad
6 habit I have.

7 A That's all right.

8 Q What was the end of that answer?

9 A I believe the Court reporter. Someone there to document the
10 transcript.

11 Q And when -- so the prosecutor is asking questions. The
12 grand jurors can also ask questions.

13 A Yes, they can.

14 Q And isn't it true, though, that sometimes when the grand
15 jurors ask questions the prosecutor can say that's an
16 inappropriate question and direct the witness not to answer?
17 Isn't that also correct?

18 A I believe so.

19 Q Okay. And the other thing is with respect to that, is that
20 there are no judge, prosecutor asks the questions, and I think
21 that's it with respect to that. Let me just confer with counsel
22 for just a minute.

23 (Pause in proceedings.)

24 Q Just one minute, Your Honor. One other thing with respect
25 to the grand jury. Isn't it your understanding, also, that the

1 prosecutor is the one that determines which witnesses to call?

2 A Yes.

3 Q No further questions, Your Honor. Thank you.

4 REDIRECT EXAMINATION

5 BY MR. HANLON:

6 Q Good afternoon, Special Agent Klas.

7 A Good afternoon.

8 Q You were asked a number of questions by Mr. Kurland about
9 the names of organizations and things like that. I don't want to
10 spend too much time on that. Often times these names are just
11 made up as a matter of convenience, isn't that correct?

12 A That's correct.

13 Q The Randallstown/Park Heights organization, that's just a
14 name that investigators, prosecutors gave to this group for
15 convenience, is that fair to say?

16 A It's a label, yes.

17 Q We could have called it the Clark Kent Organization if we
18 wanted to. It would have made no difference, is that correct?

19 A Yes.

20 Q You were asked by Mr., shown by Mr. Lawlor some documents
21 from a Correctional Services Corporation relating to Mr.
22 Mitchell's employment at the Hickey School. And those documents
23 are marked as Government's Exhibit HS-1. I just want to ask you
24 briefly, looking at the documents, they show, understanding you
25 didn't generate this document, but these computerized records

1 show for the, for Mr. Mitchell --

2 A Yes.

3 Q -- the records, they show a hire date of October the 9th of
4 2000, is that correct?

5 A That's correct.

6 Q And they show an action type, termination, is that correct?

7 A I would assume TER is termination.

8 Q Mr. Harding showed me what should have been right in front
9 of my face. And the action for that TER event is 12/31/2000, a
10 little over two months later?

11 A Yes.

12 Q Basically, 10/29 to 12/31/2000, that's the two months of
13 Hickey School employment?

14 A That's what the record indicates.

15 Q 10/9/00, 10/9/00 to 12/31. I'm sorry. A little more than
16 two months. A little more than two months?

17 A Yes.

18 Q Special Agent, Mr. Martin showed you this particular piece
19 of lyrics from, from the case or from the notes that we went over
20 for a little while. This is not one of the once I showed you.
21 It's marked as coming from N-45. So that would be the black
22 binder, is that correct?

23 A That's correct.

24 Q This is not one of the ones we presented to the jury, is
25 that correct?

1 A No, I don't believe it is.

2 Q And there's no reference in any of this to this case, is
3 that correct?

4 A Can I have a moment to read it?

5 Q Please do.

6 (Pause in proceedings.)

7 A That's correct.

8 Q It was reference to Muslims and liberties and some other
9 things here and there, but nothing really related to this case,
10 is that correct?

11 A That's correct.

12 Q Your Honor, for the record, that's Exhibit Harris Number
13 Four. With respect to the cell block event that you were asked a
14 number of questions about, I believe by Mr. Martin, Special Agent
15 Klas, when you arrived there that day with Rodney Hayes, did you
16 have any idea, just so that we're clear about this, did you have
17 any idea that Shelton Harris was in the cell block that day?

18 A No, no idea. I was very surprised when I found out that he
19 was.

20 Q Would you have handed a prisoner over into the cell block if
21 you'd have known that there was someone in there that he had
22 testified about or given information about?

23 A Never.

24 Q Part of your job as a case agent is working with people and
25 providing information to the government, is that correct?

1 A That's correct.

2 Q If you have a reputation for putting people in that kind of
3 a position, are they going to be willing to give you information?

4 A Not at all.

5 Q Finally, Mr. Martin showed you Government's Exhibit SE-12.
6 This is from the N-47 batch of documents in the red notebook, is
7 that correct?

8 A Can you pull that down for one second, please? That's
9 correct.

10 Q And there was some back and forth and some discussion about
11 this word, which I'm going to sort of move in on. There's a
12 reference to?

13 A Whoodi.

14 Q Introduce you something to the afterlife, Whoodi, I know you
15 feeling me. Let me ask you about Whoodi. How do you pronounce
16 that word? How would you pronounce that word if you saw it
17 anywhere?

18 A Woody.

19 Q You were asked a number of questions about Wodey. Just tell
20 me, Agent, would you pronounce that word Wodey or Woody?

21 A Woody.

22 Q Are you aware of any Wodeys in this case anywhere?

23 A No.

24 Q Are you aware of anyone from your investigation that Mr.
25 Harris would be interested in introducing to the afterlife, aside

1 from Woody?

2 A No.

3 Q Nothing further, Your Honor.

4 THE COURT: The record will reflect that the Woody
5 that's been referred to is spelled on the document W-H-O-O-D-I.
6 Thank you very much, Agent. You can step down. Next witness.

7 MR. HARDING: Yes, Your Honor. The United States calls
8 Task Force Officer Keith Benson.

9 TFO KEITH BENSON, GOVERNMENT'S WITNESS, SWORN

10 THE WITNESS: I do.

11 THE CLERK: Be seated. Speak directly toward the mike.
12 State your name and spell it for the record.

13 THE WITNESS: My name is Keith Benson. K-E-I-T-H.
14 B-E-N-S-O-N.

15 DIRECT EXAMINATION

16 BY MR. HARDING:

17 Q Good afternoon, Task Force Officer Benson.

18 A Good afternoon, Mr. Harding.

19 Q You're employed by the Drug Enforcement Administration but
20 you're also employed by the Baltimore City Police Department, is
21 that correct?

22 A That's correct. I'm a detective with the Baltimore City
23 Police Department and I'm deputized by the DEA and work with the
24 DEA in a task force.

25 Q And were you, during the investigation of, most of the

1 investigation of this case, were you in the REDRUM group that we
2 heard about this morning?

3 A I was.

4 Q And are you still a task force officer with the Drug
5 Enforcement Administration?

6 A Yes, I am.

7 Q Let me ask you a whole series of questions, if I may. I
8 want to begin by asking you something about one of those rap
9 songs we listened to when Mr. Hayes was on the stand, I believe
10 yesterday. This is from Track 11, which was at Tab 3 in the
11 transcript book. There's a passage that begins: Sunday night at
12 Lyles's party when it all went down, and so on and so forth. Can
13 you tell us, was February 17th, 2002, the night of the
14 Hammerjacks incident, was that a Sunday?

15 A Yes, it was. It was a birthday party for Kevin Lyles, who's
16 the President of Def Jam records.

17 Q Okay. And this guy Cesar who's mentioned in this song and
18 in several other songs, do you know who he is?

19 A He's the co-founder of Shakedown Entertainment.

20 Q Is he the guy whose name appeared on the Articles of
21 Incorporation that we saw this morning when Agent Klas was
22 testifying?

23 A Yes, he is.

24 Q Did you try to locate him at any point?

25 A I did.

1 Q And can you tell us where he is, to the best of your
2 knowledge?

3 A To the best of my knowledge he's in federal prison.

4 Q Did you subpoena many of the toll records that were
5 introduced into evidence in this case?

6 A I did.

7 Q And did you obtain other toll records from the investigating
8 detectives for the homicides you testified in this trial?

9 A I did.

10 Q I have an exhibit. I'm going to ask that Ms. Arrington
11 distribute to the jury some two handouts, Your Honor, containing
12 telephone toll information, if I may?

13 THE COURT: All right. You can hand them to the jury.
14 Looks like we got two different documents going, all going
15 westbound, I guess, ladies and gentlemen. When they get to the
16 end, they should come back eastbound.

17 Q While they're being handed out, Detective, or Task Force
18 Officer, how did you analyze the toll records that were
19 subpoenaed?

20 A One of the main focuses that I've done since I've been in
21 the detail to the DEA is work a lot of wiretap investigations and
22 complex criminal investigations, often involving cell phones. I
23 subpoenaed basically every phone that I believed to be involved
24 in the case. Once those tolls come back, I can put them into a
25 program called Pen-Link 8.0, which is basically, it's a telephone

1 analysis program that takes all of the raw data and lets you
2 analyze it in any number of ways that you would need to.

3 Q Okay. I'm going to get the copies that are left over and
4 make sure that the Court and Ms. Arrington have copies.

5 So you loaded all of the toll information into a
6 computer, basically?

7 A That's correct.

8 Q And that helped you to do your analysis, is that correct?

9 A Correct.

10 Q Let me show you what one of the exhibits that we've just
11 handed out, which I am going to move in as Government Exhibit
12 B-14. Do you recognize this?

13 A I do.

14 Q Can you describe for us what it depicts?

15 A Basically, it involves all of the cell phones and land lines
16 that I was able to attribute to the four defendants in this case.
17 It's not comprehensive. I don't know that it's all the cell
18 phones that they had. It's the ones that I could identify and
19 say for certain that were being used by the four defendants in
20 the case.

21 And then it basically is, you'll see the connections
22 between each of the individuals. And on the line in between it
23 will give you a date range and a number of total phone contacts
24 between any given subjects on the chart. So, for example, on the
25 bottom, Shawn Gardner, the two telephones, 493-1241 and 540-1253

1 were in contact with the two phones attributed to Shelly Martin
2 274 times between February 22nd and April 15th of '02.

3 Q Okay. Now, you just did this analysis with those 274 calls
4 for that limited time period of about six weeks or seven weeks,
5 is that correct?

6 A That's correct. What I was going to say next is that a lot
7 of these phones that are depicted here were only active for a
8 brief period of time, some longer than others. For example, the
9 12, 493-1241 for Gardner, there were, it was only requested to
10 have a 30 day period surrounding the Oliver McCaffity murder and
11 the Wyche brothers' murder.

12 Q Let me back up if I can because we've actually heard about
13 these phones already in the course of the testimony. But, of
14 course, no one remembers what we heard about them, I'm sure.

15 These two phones that you've attributed to Mr. Gardner
16 here, the 1241 -- first of all, the 1241 phone, that's the phone
17 that he used, it says here on your diagram, until March 26th of
18 2002, is that correct?

19 A That's correct.

20 Q The day after the Wyche murders?

21 A That's correct. And my investigation, the 1241 phone was
22 used up until 3/25 of '02 and then all calls ceased on it, and
23 Mr. Gardner then began using the 540-1253 number, which was being
24 utilized by him but was, in fact, subscribed to by the defendant,
25 Shelly Wayne Martin. And that was activated that same day that

1 the 1241 was discontinued.

2 Q And how do you attribute the 1241 phone to Mr. Gardner,
3 again, very briefly?

4 A It was listed in two of the Wyche brothers's phone address
5 books under the name Goo, and it was also listed in a handwritten
6 by, by Joyce Martin, I would assume, but in a phone book that was
7 seized from Cree Court that had all of Joyce Martin's contacts in
8 it, under Goo as well.

9 Q And just to call your attention to W-67, which is the
10 summary of phones that were listed in the Wyche brothers, the
11 recovered Wyche brothers' phones. This is one of the entries
12 that attributes that 1241 number to Goo, is that correct?

13 A Yes, sir.

14 Q And it's actually in another, at least one other phone, too,
15 is that correct?

16 A That's correct.

17 Q And the 1253 number, was that the one that was actually
18 recovered from Mr. Gardner?

19 A It was. After June 7th of 2002, after the, his arrest for
20 the Tonya Spence murder, it was recovered from his person.

21 Q It says after 3/26/02 with that phone. Is that when service
22 started on that phone?

23 A That's correct.

24 Q Do you know why, based on your experience, Task Force
25 Officer Benson, somebody might drop a phone and get another phone

1 abruptly like that?

2 MR. COBURN: Objection.

3 MR. LAWLOR: Objection.

4 THE COURT: Well, striking the word "abruptly",
5 otherwise overruled. You can answer.

6 A Yes, sir. Phones are often used for only brief periods of
7 time to avoid detection by the police, basically.

8 MR. LAWLOR: Objection, Your Honor, move to strike.

9 THE COURT: The objection's overruled.

10 A The longer an individual uses, utilizes a phone, the more
11 there is a chance that some, Person A might give it to Person B,
12 to Person C. And then before you know it, everybody has your
13 phone number and you're more susceptible to wiretaps and police
14 investigations and things of that nature.

15 Same reason that they often use nominee names or burner
16 phones, as we call them, where they're not even in a name that's
17 associated with the individual that's actually utilizing the
18 phone.

19 Q Let's move to these, these phones that are attributed to Mr.
20 Martin. A 1933 phone. How do you attribute that to Mr. Martin?

21 A That phone is listed in -- I brought a cheat sheet if it's
22 okay.

23 THE COURT: You may refer to your notes.

24 A Thank you, Your Honor.

25 Q While you're doing that, I'm going to put on the screen

1 W-68.

2 A Yes, sir.

3 Q Which is a very copious phone bill.

4 A Yes. It was, that's, the glaringly obvious one is it was
5 subscribed to in his name. Sorry. I have about 30 different
6 phones in my head right now. It was subscribed to in the name
7 Shelly Wayne Martin.

8 Q And do you remember where this telephone bill was recovered
9 from?

10 A That was recovered from Two Cree Court on the search warrant
11 by Detective Niedermeier. I can't find my cheat sheet.

12 Q Okay. And by the way, when we were looking at the phone
13 numbers that were listed in the Wyche brothers' phones, the ones
14 that were recovered from their car, there was also an entry, a
15 couple of entries for a phone 963-3912. Do you recall that?

16 A That's correct. That phone is the second one that is
17 attributed to Shelly Martin. It's -- also, a phone bill was
18 recovered from Two Cree Court in the name Wayne Martin as the
19 individual that subscribed to it.

20 Q Okay. And is this the phone bill that was recovered from
21 Two Cree Court?

22 A Yes, sir.

23 Q 963-3912, Wayne Martin?

24 A Yes, sir.

25 Q And that's Government Exhibit W5-F, is that correct?

1 A Yes, sir.

2 Q And not to belabor this. The 5811 cell phone that is
3 attributed to Willie Mitchell is also in the Wyche brothers'
4 phone books and was also the phone that called Oliver McCaffity
5 on the night of his murder, is that correct?

6 A That's correct. It was also listed in Oliver McCaffity's
7 0187 phone under the name Bo as well.

8 Q And it's listed under Bo in the Wyche brothers' phones as
9 well, is that correct?

10 A That's correct.

11 Q Is that the phone that Detective Giganti testified about
12 that was actually listed to Maryland Land Design but which he was
13 ability to trace to, because of the location where --

14 MS. RHODES: Objection, Your Honor. Could we stop the
15 leading?

16 THE COURT: Overruled.

17 A I can tell you how it is known to be used by him, if that
18 would help.

19 Q Yeah. How did it work?

20 A Basically what happened was they analyzed the telephone from
21 Oliver McCaffity, looked at, at the time of his murder, the most
22 recent calls. They noticed this 739-5811 number several times,
23 moments before, up to the time of his murder. They subpoenaed
24 that number. It came back to Maryland Land Design. And upon
25 speaking to that company, they learned that it's not, it was not

1 an authorized phone. Thus the name the burner phone. They
2 listed it as a fraud phone.

3 Q Okay. 6204, is that the phone that was actually recovered
4 from Mr. Mitchell when he was arrested on April 1st, 2002?

5 A Yes, it was.

6 Q And it was also the phone he admitted to Detective
7 Niedermeier he was using when he called Darryl Wyche that night,
8 is that correct?

9 A That's correct.

10 Q The night of Wyche's murder? These two phones, 3608 and
11 8684, were actually recovered also at the time of Mr. Mitchell's
12 arrest, is that correct?

13 A They were recovered from a search and seizure warrant of his
14 address, Four Valdivia Court.

15 Q And this line down here is the land line phone at Mr.
16 Mitchell's residence up until March 26th of '02?

17 A That's correct.

18 Q And after that, there's the land line phone for Four
19 Valdavia Court, and it says after 3/26/02?

20 A That's correct.

21 Q Did Mr. Mitchell actually change his residence on the day
22 following the Wyche brothers' murder?

23 A He did.

24 Q And also, in the Wyches' phones there's actually another
25 phone attributed to Bo that you don't have on your list,

1 410-899-9323. So would it be fair to say that some phones you
2 don't have in your, in your list here, Detective?

3 A Actually, that one is a pager that was recovered from the
4 house. It was a fraudulent pager listed to Northwest Hospital.
5 But it was also listed in one of the Wyche phones under Bo as
6 well.

7 Q And then, of course, we've heard all about this phone,
8 Shelton Lee Harris's home phone at Amity Road?

9 A Amity Street, correct.

10 Q Amity Street. And just to summarize your analysis here.
11 You were confined to some fairly limited time periods. For
12 example, it's only six weeks for the calls between Mr. Mitchell
13 and Mr. Gardner, is that correct?

14 A Correct.

15 Q And about a little longer, about -- let's see?

16 A Ten weeks.

17 Q Ten weeks or so for the calls between Mr. Mitchell and Mr.
18 Harris. And then you have only one call between Mr. Harris and
19 Mr. Martin, is that correct?

20 A Correct. Most of the subpoenas that I sent out I tried to
21 get a, I covered a year. I went back as far as I could. And
22 then upon getting the tolls realized that a lot of them weren't
23 activated until this time frame. They had been subscribed to in
24 other people's names and were inactive and things like that.

25 Q Okay. So the most calls of all are the ones that appear

1 between Mr. Martin and Mr. Gardner, is that correct?

2 A That's correct.

3 Q 274. And then there are 169 between Mr. Mitchell and Mr.
4 Martin?

5 A That's correct.

6 Q In this limited time period that's described here, is that
7 correct?

8 A Yes, sir.

9 Q Then we have 89 between Mr. Mitchell and Mr. Harris, is that
10 correct?

11 A Yes, sir.

12 Q Now, you don't have a cell phone for Mr. Harris, is that
13 correct?

14 A That's correct.

15 Q Why is that?

16 A Throughout the investigation we tried to determine if he
17 did, in fact, have a cell phone. And most of the information
18 that we received is that he did not possess one, as we've heard.
19 So we relied simply on the land line information.

20 Q Okay. Was it your understanding, based on your
21 investigation, that Mr. Harris and Mr. Mitchell were commonly
22 together with one another during both the daytime and the
23 nighttime hours?

24 MR. LAWLOR: Objection, Your Honor.

25 MR. MARTIN: Objection, Your Honor.

1 THE COURT: Rephrase the question. Lay a little better
2 foundation for that proposition.

3 BY MR. HARDING:

4 Q Based on your discussion with people we've heard testimony
5 from in this trial, including the family members of Mr. Harris
6 and Mr. Hayes yesterday and other witnesses, were Mr. Harris and
7 Mr. Mitchell frequently together?

8 A Yes, sir.

9 MR. MARTIN: Objection.

10 THE COURT: Well, I'm going to sustain the objection.
11 Ladies and gentlemen, there's no direct admissible evidence as to
12 how frequently Mr. Mitchell and Mr. Harris were actually
13 together. Counsel are free, based on all the evidence you've
14 heard, to argue one way or the other. But there is no direct
15 evidence. And Agent Benson does not have direct evidence as to
16 how frequently they were together during this period of time. Go
17 ahead, Mr. Harding.

18 BY MR. HARDING:

19 Q Okay. And then we have one call between Mr. Harris and Mr.
20 Martin, which is just before the Wyche brothers' murder, is that
21 correct?

22 A Yes, sir, the day before.

23 Q And then there are 49 calls between Mr. Mitchell and Mr.
24 Gardner. I guess we already went over that.

25 A Right.

1 Q Okay. Thank you very much. You are familiar with Oliver
2 McCaffity from your investigation, is that correct?

3 A Yes, sir, I am.

4 Q And by the way, I forgot to mention that 5811 number is the
5 one that popped up on McCaffity's screen that night as the last
6 call he received on his phone that night?

7 A That's correct.

8 Q And he also, was also listed as a phone number that he had
9 dialed that night, is that correct?

10 A That's correct.

11 Q But the very last call he had that night was with a guy we
12 heard from by the name of Aneese Rahime (phonetic). Do you
13 recall that?

14 A Yes, sir.

15 Q Do you know who Aneese Rahime is?

16 A He's the uncle of Oliver McCaffity.

17 Q So he's just a relative of Woody's, is that correct?

18 A Yes, sir.

19 Q Where did Mr. McCaffity work, by the way?

20 A He worked for Hasim Rahman, as far as I know, his only
21 employment, at his Dreams Store. He was part of a distribution
22 of a clothing line.

23 Q Okay. I want to show you now what's been marked as
24 Government Exhibit B-1. Did you prepare at my request a summary
25 of all the phone calls between Woody, Oliver McCaffity --

1 A I did.

2 Q -- and the defendants in this case?

3 A Yes, sir.

4 Q And is this particular exhibit, B-1, is this the calls from
5 McCaffity to the defendants?

6 A Yes.

7 Q Okay. And if I can just briefly go through this with you.
8 This is going to be an exhibit so the jurors are going to have a
9 chance to look at it in more detail.

10 Does this show that Mr. McCaffity called Mr. Mitchell,
11 or at least tried to call him, some of these are very short
12 calls, but tried to call him a number of times beginning in
13 January of '02? Then there are some calls in early February, mid
14 February. And then starting on, actually, this, these four calls
15 on the 18th of February in the nighttime, would that be the night
16 after the Hammerjacks incident?

17 A Yes, sir. It was the following night.

18 Q So Mr. McCaffity called Mr. Mitchell four times that night
19 after the Hammerjacks incident?

20 A Correct.

21 Q At least according to your analysis?

22 A Yes, sir.

23 Q And then there's some more calls. And then we get to the
24 26th and there are just a whole bunch of calls that night,
25 outgoing calls, all of them to Mr. Mitchell. Except there is

1 this one call to Shelton Harris, is that correct?

2 MR. CROWE: Your Honor, I would object. Could we have
3 question and answer?

4 THE COURT: Overruled. It was a question. Go ahead,
5 Mr. Harding.

6 Q Is that correct?

7 A Yes, sir. On the 19th, there was an outgoing call to the
8 home of Shelton Harris.

9 Q And that's, that's on the 19th, which would have been --
10 actually, the Hammerjacks incident was at about 1:15 a.m. on the
11 18th, is that correct?

12 A Yes, sir. The night of the 17th into the early morning of
13 the 18th.

14 Q So the 19th is actually the day after the incident?

15 A Correct.

16 Q Okay. There's an outgoing call from Mr. McCaffity to
17 Shelton Lee Harris at his home number there on Amity Street, is
18 that correct?

19 A Yes, sir.

20 Q Or at least there's a call to the phone at that residence,
21 is that correct?

22 A That is correct.

23 Q And then we have all these calls to Mr. Mitchell on the
24 night of the 26th going into the 27th that we're going to go into
25 a little more detail on in a minute.

1 Is B-2, the next page, Government's Exhibit B-2, is
2 this just a summary of the calls from the defendants to Mr.
3 McCaffity?

4 A That's correct. And the reverse direction.

5 Q Okay. And there are a lot of calls, again, from Mr.
6 Mitchell to Mr. McCaffity. You, of course, you probably only had
7 tolls beginning in January of '02, is that correct?

8 A That is correct.

9 Q Looks like you may have gotten your tolls at the end of
10 January, is that correct?

11 A I believe I subpoenaed for the beginning, from January 1st,
12 and the phone was not, Mr. McCaffity's phone began being used on
13 the 31st. That's why the tolls, those are the first records
14 shown.

15 Q And so, but there's a whole series of calls from Mitchell to
16 McCaffity, including some on the 18th after the Hammerjacks
17 incident. And then the ones on the 26th and 27th that we're
18 about to look at a little more closely?

19 A That's correct.

20 Q That brings us to the next handout which the jurors have.
21 This is Government Exhibit B-3. I wonder if you could just go
22 through this. Is this something you prepared, Detective?

23 A Yes, it is.

24 Q Could you go through these item by item and tell us what the
25 calls were that night between --

1 A Beginning on the, this chart encompass only, as you see at
2 the top, the 26th and the 27th of February of '02. Beginning at
3 5 p.m., 5 p.m. and 49 seconds p.m., there was an attempt, it was
4 only one second long, but it was an attempt from the 5811
5 Mitchell number to Oliver McCaffity's phone. Approximately a
6 minute later, a minute 15 seconds later there was a two, a one
7 minute 12 second connected call from McCaffity back to the 5811
8 number. And again at 5:20:53, there was a 19 second connected
9 call between, from McCaffity to Mitchell.

10 No other calls up until 8:33 p.m. Between, in the
11 interest of the size of the chart, there were 18 attempts between
12 8:33:44 and 9:41:42 p.m., so an hour and a few minutes, there
13 were 18 attempts to contact, McCaffity attempting to contact
14 Mitchell on the 5811 number, all of which went to voice mail.

15 Shortly after midnight, 12:07 a.m. on the 27th, there
16 were two more attempts. Again, both went to the voice mail of
17 5811.

18 The following evening of the 27th, which is the night
19 of the, leading up to the murder, there was two calls, 6:38 p.m.
20 and 6:38:19 p.m. Both went to voice mail, again.

21 Then at 9:43:25 p.m., there is a call from the 5811
22 Mitchell phone that lasts one minute four seconds to the
23 McCaffity line. And my cell tower analysis showed it was a Cell
24 Tower 10171, which is located at 2401 Violet Avenue in northwest
25 Baltimore.

1 Again, Mr. McCaffity called the 5811 number at 10:49
2 p.m. There was a 39 second connected call. And again, Mr.
3 Mitchell's phone was hitting the cell tower 10171, again, 2401
4 Violet Avenue.

5 And the final call was at 11:23:15 p.m. There was a
6 one minute 14 second connected call from McCaffity to Mitchell,
7 and again hitting that same tower, 10171.

8 Q Okay. And if I may, this is Government Exhibit B-4. Did
9 you prepare a map using Google Earth of the cell site tower 10171
10 and its location relative to the murder scene?

11 A I did.

12 Q Is this Violet Avenue? You can't see this very well.

13 A I can see it okay.

14 Q You can?

15 A Yes, sir.

16 Q Yeah. It's on Violet Avenue. Is the cell tower actually,
17 is that side of it actually exactly parallel to Violet Avenue?

18 A Yes, sir. And the point runs north with Cottage Avenue.

19 Q And is this big street here Reisterstown Road?

20 A Yes, it is.

21 Q And this is northward, then, is that correct?

22 A Yes, sir.

23 Q Okay. And you have up here McCaffity/Brown murder scene, is
24 that correct?

25 A That's correct.

1 Q Now, is this cell tower the closest one to the
2 McCaffity/Brown murder scene?

3 A Yes, it is.

4 Q And you say that Mr. Mitchell's phone was hitting off this
5 cell tower in those calls immediately before the murder, is that
6 correct?

7 A Yes, sir. The 1017 is the actual number of the cell tower.
8 The one at the end of it indicates that it's hitting the
9 northeast quadrant of it. It numbers clockwise from that
10 northeast quadrant. One, two, and three is the northwest
11 quadrant.

12 Q So Mr. Mitchell's phone was somewhere in this area?

13 A It's a little -- yes, sir.

14 Q Would the area include the scene of the murder?

15 A Yes.

16 MR. LAWLOR: Objection, Your Honor, foundation. Move
17 to strike.

18 THE COURT: Overruled.

19 Q Did you also prepare a map showing where the next closest
20 T-Mobile cell tower was --

21 A Yes, sir.

22 Q -- compared to where the murder occurred?

23 A Yes, sir. I ran all of the T-Mobile cell sites in that area
24 of Baltimore City. And the next two closest that I could find,
25 one is the one just north of there. It's 2500 West Belvedere

1 Avenue, which is, as I indicated on the map, it's .83, hard to
2 see the point, but it's .83 of a mile from the murder scene.
3 Cell tower 10171 is .7 of a mile. So roughly a tenth, a little
4 over a tenth and a half or A little less than a tenth and a half
5 of a mile closer. And the next closest is up in this northwest
6 region, which was almost two full miles away.

7 Q Okay. Now, what I'd like you to do, Detective, using the
8 Jason Elders map of the GPS coordinates, I'm wondering if you
9 could step down from the bench for a moment. Step behind that
10 table there in the middle of the courtroom.

11 THE COURT: Grab that microphone as you go by, please,
12 Agent Benson. Would it be better if you sat it up on the table,
13 Mr. Harding?

14 Q Okay. I'm going to hold this on the table.

15 THE COURT: Can you back up just a bit so counsel can
16 get a good view? Okay. Remember to speak into the microphone.

17 THE WITNESS: Yes, sir.

18 Q Yes. Do you have the times of the calls with you so you can
19 tell us when --

20 A I have the call, the times are on the chart, if I can have
21 the chart to refer to.

22 Q Okay. First of all --

23 THE COURT: I'm sorry. Move it back just a bit,
24 please, Mr. Harding. Okay.

25 Q Okay. Now, the call between Mr. Mitchell and Mr. McCaffity

1 at 9:43 would be too early to be on this chart at all, is that
2 correct?

3 A Yes, sir. When I ran that one, it was down in Hanover,
4 Maryland, which is roughly down at the Anne Arundel Mills Mall,
5 where we had information that he was attending a movie.

6 Q So the next call is at 10:49 p.m. 10:49 p.m. and 44
7 seconds. Where was he at that time?

8 A 10:49. 10:39, he was in the 2300 block of Eutaw Place,
9 which is where Lisa Brown lives.

10 Q And in fact, the GPS device was asleep at that time, is that
11 correct?

12 A That's correct.

13 Q Okay. Now, where was he at the time of the next call at
14 11:23 and 15 seconds?

15 A Actually, there's, well, 9:43, 10:49. 10:49. I'm sorry.
16 Yes. 10:49, it was Eutaw place. 11:23, just as, just as the
17 vehicle on the GPS plots his entering, as Mr. Elder testified to,
18 the GPS indicated that it came in and it looped the block twice
19 before it stopped at the intersection of Finney and Edgecombe
20 Circle. The first hit was just as, just as the vehicle was
21 entering the Edgecombe Circle, is when that call was activated
22 from Mr. McCaffity out to Mr. Mitchell.

23 Q Okay. The call is at 11:23 p.m., which would be 23 --

24 A Yes, sir.

25 Q 2323, is that correct?

1 A This call, this plot on the GPS is 11:24:12. So between the
2 two plots he was right in this stretch as that call was placed,
3 making his first loop around the block.

4 Q Okay. But this call, this GPS signal right here says 23:22,
5 which would just be a minute before, is that correct?

6 A That's correct. He came in and it appears that he did a
7 figure eight around the neighborhood. The blocks are, you could,
8 having, knowing this area, you could loop this block in under 30
9 seconds. So the two loops of the block, I presume from the time
10 of the call and the time of the GPS plots, as he was looping the
11 block is when the call was placed.

12 Q Looks like 23:23 is up here. 23:23:31, is that correct?

13 A Yes, sir. He came in, went eastbound, northbound, back
14 across westbound on Edgecombe. Right here is 23, 23:23:31, which
15 is 11:23:31. Made this corner and the next plot is 23:24:12. So
16 as he's coming back to where he sat at this intersection, before
17 the car drifted forward into the tree.

18 Q And how long did he sit here?

19 A If I recall from, the GPS went to sleep for approximately
20 four, five, four minutes.

21 Q I mean before it went to sleep, how long was he sitting?

22 A The plots indicated he was sitting there for two to three
23 minute before it rolled down the hill and into the final resting
24 place.

25 Q And so did that final call with Aneese Rahime, his uncle,

1 occur within that time period?

2 A Yes. The call was, the call was a 52 second call. I don't
3 have the exact time of it. It was right after the end of the
4 last Mitchell call. There was a 52 second call to Aneese Rahime.
5 As that call ended was approximately two more minutes later that
6 the car then rolled down the hill and came to its resting place.

7 Q Okay. The last outgoing call to Mr. Mitchell, in fact, the
8 last outgoing call he made that night, he was riding around, he
9 was up here going around in a circle looking for this spot where
10 he finally stopped?

11 A That's correct.

12 Q Okay. Thank you. I need to simply identify this particular
13 chart as B-5, the one that shows where the cell sites were in
14 relation to the murder scene. Now, did you also analyze calls
15 between these defendants and a man by the name of Sherman Kemp,
16 also known as Goose?

17 A I did.

18 Q Were you, by the way, involved in the investigation and
19 prosecution of Sherman Kemp, Goose?

20 A Yes, sir. I was one of two case agents on the
21 investigation, which was a Title III wiretap, state wiretap
22 investigation targeting Sherman Kemp.

23 Q Did your investigation include the year 2002?

24 A It did.

25 Q Was Mr. Kemp a major drug trafficker here in Baltimore at

1 that time, in 2002?

2 A Yes, sir.

3 Q Did he ever cooperate with you?

4 A He did not.

5 Q Was he, in fact, on the original Stop Snitching video?

6 A Yes. He and the second target of my investigation was a
7 Chermaine Taswell. They were partners in their drug operation.
8 They were the featured figures, I guess you could call them,
9 throughout the, throughout the length of the Stop Snitching one
10 video. He's on there showing watches and then cars and he's a
11 central figure in that, in that video.

12 Q And is it accurate to say that the only phone number you had
13 for Mr. Kemp back in 2002 was the number for the County Sports
14 store that he operated, where Mr. Martin worked for a time, on
15 Loch Raven Boulevard?

16 A That is correct.

17 Q And did you run through your computer any calls that these
18 defendants made to that number at County Sports?

19 A Yes, sir. I ran that number as well as all the numbers from
20 my wiretap investigation, which most of them I knew were fresh.
21 We came across nine different cell phones during that wiretap
22 investigation. Only one of them had any sort of history to it.
23 But it didn't go back as far as this one did.

24 Q Were there three calls, two of them involving Mr. Martin and
25 one of them involving Mr. Gardner, in February and March of 2002

1 to the number associated with Goose?

2 A Yes, sir. The two calls were the day from Shelly Wayne
3 Martin to Kemp, date after the Hammerjacks incident. And the one
4 from Gardner's 1241 phone was the day after the Wyche murder.

5 Q Okay. This is Government Exhibit B-7. Did you also, at my
6 request, prepare a summary of calls between these defendants and
7 Ernest Reynolds?

8 A I did.

9 Q Did you, by the way, attend a proffer session with Mr.
10 Reynolds on May 20th of 2004, when he came in and cooperated?

11 A I did.

12 Q Did he discuss in that proffer session the motive that Mr.
13 Gardner had for --

14 MR. COBURN: Objection.

15 THE COURT: Sustained.

16 Q Well, let me rephrase that, if I may, Your Honor.

17 A Did Mr. Reynolds tell you at that time why it was that Mr.
18 Gardner --

19 MR. COBURN: Objection.

20 Q -- needed money --

21 MR. COBURN: Objection.

22 THE COURT: Let him finish asking the question, please.

23 MR. COBURN: Yes, Your Honor.

24 Q Why it was that Mr. Gardner needed money at the time of the
25 Jones Spence murder that he was locked up for?

1 MR. COBURN: Objection.

2 THE COURT: Sustained.

3 Q Okay. Let me show you B-6. Is this a summary of all the
4 calls you had between these defendants and Mr. Reynolds in the
5 period from January, '02 up to March of '02?

6 A Yes, sir.

7 Q Okay. Moving right along.

8 MR. PYNE: We've never been provided a copy of these
9 slips.

10 Q It should have been in that packet that I handed out the
11 other day.

12 MR. MARTIN: It wasn't there.

13 MR. FLANNERY: It was not.

14 THE COURT: We can take care of that. Can you move on
15 to another area perhaps, Mr. Harding, while --

16 MR. HARDING: Yes.

17 THE COURT: Mr. Harding, just so you know, it's now
18 approximately five of four. My plan is to push on for another, I
19 don't know, 10, 15, 20, 25 minutes. You can get as much done as
20 you can. And then since the jury's coming back tomorrow, anyway,
21 rather than take a recess, we'll just go as far as we can before
22 4:30. We'll excuse the jury and then we'll conclude tomorrow.

23 MR. HARDING: Okay. 20 or 25 minutes?

24 THE COURT: Yeah.

25 MR. HARDING: That's fine, Your Honor.

1 THE COURT: You have the flexibility.

2 BY MR. HARDING:

3 Q Okay. Detective Benson, this chart, W-66, which is in
4 evidence, is something you worked on with Detective Niedermeier,
5 is that correct?

6 A Yes, sir.

7 Q And I'm not going to go through this again, of course. But
8 I am, I do have one question. Down here in this corner, the
9 final calls that night, there is, first of all, a call that was
10 connected between Darryl Wyche's -- actually -- first there's a
11 call that was connected to Mr. Mitchell from Darryl Wyche's cell
12 phone in which the number is 8844. Do you recall that?

13 A That's correct.

14 Q And then there's this call from the cell phone that was
15 never recovered, Mr. Wyche's 9203 cell phone, to the Irene
16 Magginson voice mail, is that correct?

17 A Yes, sir.

18 Q And you recall Detective Niedermeier testified that there
19 was a call listed on the toll records to Darryl Wyche's cell
20 phone immediately following that, is that correct?

21 A That's correct.

22 Q In fact, of course, if Darryl Wyche's phone was being used
23 to call Irene Magginson's voice mail, nobody else could have
24 gotten through to Darryl Wyche's cell phone until that was over
25 with, is that correct?

1 A That's correct. The first call that you referenced, the
2 Irene Magginson cell phone call, was 12:38:21. It lasted for
3 five minutes nine seconds, which, in the billing as we've heard,
4 was rounded up to the six minute mark. Just as that call ends, a
5 call from the land line is received by that same telephone and
6 the duration is three minutes.

7 Q Okay. Now, so you say five minutes and nine seconds, is
8 that right?

9 A Yes, sir. Well, five minutes, five minutes one second up to
10 five minutes nine seconds is when the next, when the land line
11 call came in. So it could be between 5:01 and 5:09 based on the
12 billing and based on the next call coming in.

13 Q Okay. So if it began at 12:38 and 21 seconds, you added
14 five minutes to that, it would be about 5:43 and twenty some
15 seconds?

16 A Correct. I subtracted the 12:43:30, which was the incoming
17 call, subtracted the 12:38:21. That gave me five minutes nine
18 seconds.

19 Q And we heard on the voice mail the last thing that was said
20 was, I'm calling your house, Shorty, is that correct?

21 A Correct.

22 Q And then you picked up this call from Mr. Mitchell's 6204
23 phone, which is the phone that you later recovered from him, is
24 that correct?

25 A That is correct.

1 Q And he called Harris's home at 12:44:06, is that correct?

2 A That's correct.

3 Q And so how long did this phone conversation last, last where
4 a residential phone was used to call Darryl Wyche's phone after
5 the voice mail was left?

6 A It lasted, the bill was three minutes. I believe that's the
7 call that Natasha Wyche testified to, that she called his phone
8 and couldn't make out what was in the background. It was
9 answered but it wasn't answered by her husband. It lasted
10 approximately two to three minutes. The bill was three minutes
11 on it.

12 Q Okay. And so that may have still been going on at the time
13 that Mr. Mitchell at least placed this call to Harris's home?

14 MR. LAWLOR: Objection.

15 MR. FLANNERY: Object.

16 THE COURT: The jury will remember that what these
17 charts and this information provide us is the usage of phones.
18 It doesn't tell us who used the phone. Go ahead, Mr. Harding.

19 THE WITNESS: That's correct. The call would have,
20 would have been from 12:43:30 to 12:45:31, up to 12:45 --
21 12:46:30. Meaning the three minute billing, it could have been
22 anywhere from two minutes one second up to three minutes.

23 While that is going on, while that call is placed into
24 the Wyche phone, there's a call from the phone associated with
25 Mitchell to Harris's home right after he said, I'm calling your

1 house, Shorty.

2 MR. LAWLOR: Objection, Your Honor.

3 THE COURT: Again --

4 MR. LAWLOR: Move to strike, Your Honor.

5 THE COURT: Again, Detective Benson says right after he
6 was, he said, I'm calling your house, Shorty. It's for you,
7 ladies and gentlemen of the jury, based on the evidence you've
8 heard in this case and in accordance with my instructions to you
9 on the law, to find the facts, including the facts who made a
10 particular call or who made a particular statement.

11 Go ahead, Mr. Harding.

12 BY MR. HARDING:

13 Q Okay. This was a 19 second call, is that correct?

14 A That's correct.

15 Q And it was to a residential phone for which there's no toll
16 records. Is that available?

17 A That's correct. Any local calls are not billed on
18 residential lines. You're only charged for long distance.

19 Q So do you know if this, if there was actually a conversation
20 in this 19 second period or a voice mail or what?

21 A That I don't know. All I know, there was a 19 second
22 activation.

23 Q Okay.

24 A That he was charged for. So whether it reached a voice mail
25 or whether someone answered, I don't know that.

1 Q Well, would he have been charged for it if he never got a
2 connection at all?

3 A No.

4 Q Okay. Did you also, at my request, run some tolls on Mr.
5 Mitchell's phone in the period just before he was locked up on
6 April 1st, 2002?

7 A Yes, sir.

8 Q And this is Government Exhibit B-8. This simply shows, does
9 it not --

10 MS. RHODES: Your Honor, I'm going to object to this.
11 We have not been provided a copy of this.

12 THE COURT: A copy will be provided. Overruled.

13 Q This simply shows that there were some calls between Mr.
14 Mitchell and Mr. Gardner and Mr. Martin during the couple of
15 hours or so before he was locked up, is that correct?

16 A Correct. While we were, I was part of the arrest team that
17 arrested Mr. Mitchell. He had been observed, observed using a
18 cell phone during our surveillance in preparation for his arrest.
19 And I ran that specific date to see who, who he was talking to up
20 until the minutes. I arrested him at approximately 6:56, 6:57,
21 moments after that last phone call ended.

22 Q Okay. You arrested him. You were actually there, is that
23 correct?

24 A Yes, sir.

25 Q And could you tell us what happened at the arrest? First of

1 all, what were you arresting him for?

2 A We had two outstanding warrants for his arrest. One out of
3 Altoona, Pennsylvania, for failure to appear. And the second was
4 for the stabbing incident that occurred at Hammerjacks, an
5 assault with intent to murder, four counts on that one. So we
6 were going out to effect his arrest.

7 Q And who else was with you?

8 A At the time, it was my partner, Donald Kramer. We had set
9 up surveillance at several locations, the Valdavia Court
10 location, the work address of his baby's mother's work, which is
11 Global Payments on Red Run Boulevard in Owings Mills. Several
12 other locations in an attempt to first locate him so that we
13 could arrest him.

14 We received, I received information, I had a Baltimore
15 County detective, plainclothes, with me as well, so we could have
16 radio communications with the other units in case one of the
17 units had spotted him, we would know where to converge to make
18 the arrest.

19 Q This Red Run Boulevard location where Mr. Mitchell's baby's
20 mother, Jaquetta Smith, worked?

21 A Yes, sir.

22 Q That's in the county, is that correct?

23 A Yes, sir. It's on Red Run Boulevard. I think it's Owings
24 Mills, if I'm not mistaken.

25 Q You had units out there and you had units at Valdavia Court?

1 A Correct.

2 Q And where were you?

3 A I was en route from my office with my partner and the
4 Baltimore County detective when we received word that Mr.
5 Mitchell had been spotted in a black Nissan Ultima at the Global
6 Payments location. That was as we were en route to, I believe I
7 was headed to Valdavia Court. And once we learned that he was
8 located at Global Payment, we diverted our path and went to the
9 Global Payments location.

10 Q And what happened?

11 A Before we could get to that location and effect his arrest,
12 he waited there for several moments. When he pulled on to the
13 parking lot, he got out of the driver's seat, got in the
14 passenger seat. And he waited, made a couple phone calls. A
15 short time, maybe ten minutes later, Jaquetta Smith came out, got
16 in the driver's seat of the vehicle, and they drove from the
17 location.

18 So my partner, Don Kramer, and I, who was driving, we
19 attempted to, we had one unit following the vehicle and we
20 attempted to kind of intercept as best we could. We weren't sure
21 where they were going. We eventually ended up behind him in the
22 6800 block, or 69 or 7000 block of Reisterstown Road, heading
23 southbound. We were able to effect a car stop with Baltimore
24 County units in the 6800 block of Reisterstown Road at Brook Hill
25 Avenue.

1 Q You mean marked patrol cars from Baltimore County?

2 A Yes. We had the, like I said, the Baltimore County
3 detective was able to radio for a marked unit. We were in a
4 Dodge minivan, I believe. It was some sort of minivan, Ford
5 minivan. And we didn't have lights to effect the arrest so we
6 had marked units called in to make the stop for us.

7 Q And what happened then?

8 A The vehicle was stopped. Mr. Mitchell was placed under
9 arrest for the two outstanding warrants. And I recovered a
10 Lorcin 9 millimeter handgun from his sock, ankle area of his
11 right leg.

12 Q Okay. And is that Government Exhibit N-1 that we've already
13 seen and has been admitted into evidence in this case?

14 A Yes, sir.

15 Q Okay. So you actually recovered this gun, is that correct?

16 A Yes, sir.

17 Q What else did you recover from him?

18 A He had a, Mr. Mitchell had a black and silver folding knife
19 in his right front pants pocket, as well as a single bag of
20 marijuana with a Pink Panther logo on it. And that was from his
21 person. That was it. And his cell phone was on the seat next to
22 him. So I recovered that as well.

23 Q Okay. Now, the knife is Government Exhibit N-4. Is this
24 the knife that you recovered from Mr. Mitchell that day?

25 A Yes, sir.

1 Q Is this what's known as a slap knife?

2 A I've never heard of it called that. Just a folding, folding
3 knife.

4 Q Okay. And the telephone is Government Exhibit N-5, is that
5 correct?

6 A Yes, sir. It's a Sanyo Sprint phone.

7 Q And what are the last four digits of the telephone number?

8 A That's the one ending in 6402? If I can see the chart
9 again. I believe it's 6204. I'm sorry.

10 Q Good. It's good to know that even you need a chart. That's
11 the phone that Mr. Mitchell was using to call --

12 A Yes, sir.

13 Q -- lots of people on the night of the Darryl and Anthony
14 Wyche murder, according to his own statement, is that correct?

15 A Yes, sir. And it was also the, used to call, or the last
16 call was to Shelly Wayne Martin, as from what Jaquetta Smith told
17 me after we --

18 MR. LAWLOR: Objection, move to strike.

19 A -- effected.

20 THE COURT: Overruled.

21 A Jaquetta Smith told me that they were en route to the Wyche
22 brothers' funeral.

23 MR. LAWLOR: Objection, move to strike.

24 THE COURT: They were southbound on Reisterstown Road.

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: Okay.

2 MR. LAWLOR: Move to strike, Your Honor.

3 THE COURT: The jury is to disregard the last statement
4 by the witness.

5 BY MR. HARDING:

6 Q Was this the day of the Wyche brothers' funeral?

7 A Yes. The viewing, rather, at the church.

8 Q Which is on Reisterstown Road, is that correct?

9 A Correct. South of the location where I stopped them.

10 Q Okay. And this little slip of paper, Government Exhibit
11 N-2, do you recognize any of the phone numbers on this little
12 slip of paper? First of all, where did you recover it from?

13 A That was from inside the Nissan Altima. The top number,
14 443-838-1933 is the phone subscribed to and attributed to Shelly
15 Wayne Martin. The fourth one down, 443-1240, I'm sorry,
16 493-1241, with 443, is the phone number attributed to Shawn
17 Gardner.

18 Q Okay. There's another piece of paper in here called N-3.
19 And there are two phone numbers listed under Will. Do you know
20 whose phone numbers those were?

21 A I don't. I attempted to ascertain if they might belong to
22 any of the Wills involved in this case, Will Montgomery in
23 particular. I could not determine from him the cell phone number
24 that he had at that time. So I couldn't check it against my
25 records.

1 Q Okay. And then what did you do after Mr. Mitchell was in
2 custody?

3 A I transported him to Central Booking to be charged, or
4 transported him to Central District, where he was transferred to
5 Central Booking, to be, and I did the charging paperwork.
6 Actually, I take it -- sorry. Skipped a part.

7 We went to, from, from the arrest location, we drove to
8 Four Valdavia Court. We weren't far from the location and we
9 didn't have much manpower, being that we had other locations that
10 we were working on. We went from 6800 Reisterstown Road to Four
11 Valdavia Court to execute a search warrant that had already been
12 prepared for the location.

13 Q Okay. Let me show you what's been marked Government
14 Exhibit -- hasn't been marked. I'll assign it a V number, if
15 Agent Klas and give me the next V number. And I will put this on
16 the screen right now. Can you tell us what this is, Detective?

17 A Yes, sir. That's the location for the apartment building,
18 Four Valdavia Court.

19 Q Okay. I'm going to call this V-23. And in fact, are these
20 close-ups of the front door of Four Valdavia Court, and also the
21 apartment door associated with --

22 A Yes, sir.

23 Q -- Mr. Mitchell? V-23, is that correct? V-23? V-22.

24 A V as in Victor.

25 Q Actually, you can't see it very well but there's actually a

1 B on this door, is that correct?

2 A Yes, sir.

3 Q All right. I have some exhibits to show you in here. Let's
4 start with Government Exhibit V-12. Was this a box of thirty-two
5 .38 caliber bullets?

6 A Yes. There was a box of .38 caliber ammunition containing
7 32 rounds.

8 Q Okay. It says one brown bag and one blue box. So is this
9 the brown bag right here, part of the exhibit?

10 A Yes, sir.

11 Q Maybe I better ask you to open this up or ask Ms. Arrington.
12 I'll open it up. Okay. So this is the blue box. What does S
13 and W stand for?

14 A Smith & Wesson.

15 Q .38 caliber, is that correct?

16 A Yes, sir.

17 Q And then there are a bunch of looses bullets in here, also,
18 is that correct?

19 A Yes, sir.

20 Q Do you remember, were these with the box of bullets or what?

21 A I can't really see them on the monitor. Yes. I believe
22 they were all in the same location together.

23 Q Okay. They all have writing on them. But they're just
24 numbers that I assume are associated with this investigation, is
25 that correct?

1 A They are Crime Lab. They weren't, when they were recovered,
2 they weren't in the, obviously, in the bags like that with the
3 numbers on them. They were loose. And they were subsequently
4 put in those bags and numbered by Crime Lab.

5 THE COURT: A couple more minutes, Mr. Harding.

6 Q Okay. V-8?

7 A Yes, sir.

8 Q As in the vegetable juice. What's in this one? You can
9 just read it off.

10 A Yes. A Glock .40. A magazine for a Glock .40 handgun. I
11 believe that says 20, 21, 9 millimeter bullets and three .40
12 caliber bullets.

13 Q Or could that just be the number two following the sequence?

14 A Yes. A Glock magazine. Possible one 9 millimeter bullet
15 and one .40 caliber bullet.

16 Q Okay. That's the magazine, obviously. And the bullets are
17 in this little envelope. Is that correct?

18 A Yes, sir.

19 Q So we have 9 millimeter and Glock .40. Does that mean Glock
20 .40 caliber magazine?

21 A Yes.

22 Q Okay. .38, .40, and 9 millimeter. And in fact, one of the
23 bullets is a .40 caliber bullet, is that correct?

24 A Yes, sir. That's correct.

25 Q Here's another one with a 9 millimeter bullet and a paper

1 towel, is that correct?

2 A Yes, sir.

3 Q This being exhibit V-11. And this is V-7, which contains
4 some paperwork. I want to quickly show you one of the things in
5 here. This is a Meineke receipt, is that correct?

6 A Yes, sir. It's a receipt in the name Boh, B-O with an H.
7 It's for an '82 Honda Accord.

8 Q And are you familiar with an '82 Honda Accord in this case?

9 A Yes, sir.

10 Q How so?

11 A The defendant Gardner owned one at one time.

12 Q Do you know whether this is the same car that was being
13 serviced by Boh or that Boh acquired it? Do you have any
14 knowledge?

15 A There's no VIN number or tag number. I couldn't say.

16 Q This pager right here, V-6, is this the one you were talking
17 about earlier when we were going through the list of numbers from
18 Darryl and Anthony Wyche's telephones and we came up with that
19 number?

20 A Yes, sir. Subpoena showed that it was a Northwest Hospital
21 pager. When I contacted them in '04 or '05, it was actually
22 still active. It was, they issued blocks of pagers to their
23 employees and that was, I believe that's one. No, actually --
24 does that flip open? You can tell me. Or is it just a pager?

25 Q It's just --

1 A Okay. That is the Northwest Hospital pager. There is
2 another, like a two-way type pager that was also recovered.

3 Q Is that this one, V-3?

4 A No. That's the Ericsson cell phone. That's one of the two
5 numbers that I believe are listed on the chart.

6 Q Okay. I guess, Your Honor, do you want me to stop now or I
7 have another five minutes worth?

8 THE COURT: Okay. Go ahead.

9 Q Let me show you V-9, Detective. Are you familiar with what
10 these are?

11 A Yes, sir.

12 Q What are they?

13 A They refer to them as apple bags. They are often used to
14 package nickel bags, nickel bags of marijuana or dime bags of
15 marijuana. They can also be used to package crack, depending on
16 the size of them.

17 Q Okay. And do you know how many are in this bag?

18 A I would say estimate, maybe a hundred or more. Very thin.

19 Q V-16.

20 A Those are also apple bags with a money sign logo, also maybe
21 a hundred or so of them.

22 Q And what are these used for?

23 A Same thing. Packaging narcotics.

24 Q Here's V-5. Do you know what this is?

25 A Another cell phone that was recovered from the house. Four

1 Valdavia Court.

2 Q And did you include this in your analysis?

3 A I would have to look at the actual numbers on them. I
4 basically sent subpoenas out for data on all of them, the pager,
5 the phones that were recovered, all of them.

6 Q Okay. Let me show you -- first let me show you V-21, which
7 is a photograph. Did you recover this from Valdavia Court?

8 A Yes.

9 Q Let me ask you about a couple of the people in this
10 photograph. First of all, who's the gentleman in the blue shirt
11 here?

12 A That's Willie Mitchell.

13 Q And who's this guy over here, to his right?

14 A Shawn Gardner.

15 Q And who's this guy sitting down here in the front?

16 A Anthony Wyche.

17 Q Got some more photographs here.

18 A That's Mr. Mitchell.

19 Q Okay. And can you read what it says on his shirt?

20 A Hickey.

21 Q Okay.

22 MR. MARTIN: What exhibit was that?

23 Q This is V-19. Okay. This is V-20.

24 A Again, Mr. Mitchell wearing Hickey School shorts.

25 Q This is V-14.

1 A That's Shelton Harris.

2 Q V-15?

3 A Again, Shelton Harris.

4 Q V-18.

5 A On the right is Mr. Gardner. I'm not sure who the left
6 individual is.

7 Q V-13?

8 A This is a picture on the lower -- if I can do this on this
9 monitor. The lower individual kneeling down sticking the finger
10 out is Mr. Harris. He's wearing a hat that says Sheistyville.
11 Standing up behind him is Mr. Mitchell. I'm not sure who the
12 other individuals are. I think one, if you can slide it to
13 the --

14 Q First of all, you said that --

15 A Yes. That's Mr. Harris.

16 Q Wearing a hat that says Sheistyville?

17 A It's hard to see. If you look at the actual photo, you can
18 see that it says Sheistyville.

19 Q Okay. And where's Mr. Mitchell?

20 A He is above him, second from the right.

21 Q This gentleman?

22 A Yes. And the one in the right may be Slo. I'm not 100%
23 sure on that. Marvin Walker.

24 Q Okay. This is, this is from an envelope that is V-17.

25 A That's a business card that was recovered from Four Valdavia

1 Court, showing the name David Cesar as the co-founder. Willie Bo
2 Mitchell as the co-founder and president of Shakedown
3 Entertainment.

4 Q And here's David Cesar, co-founder, right?

5 A Correct.

6 Q Do you know who Ronnie Coleman is, Vice President?

7 A I don't.

8 Q Do you know who Black is, by any chance?

9 A No. I ran that number against the tolls and was
10 unsuccessful.

11 Q Okay. Here's a business card for a bail bonds place. And
12 on the back --

13 A Yes. The bail bond, the Platinum Bail Bonds is owned by,
14 associated with Shawn Gardner. His sister, I believe, is the one
15 that runs it. And on the back is the named David Caesar, and
16 Western Correctional Institute, which is the first thing that led
17 me to believe that he was federally incarcerated. And I did find
18 record of a David Cesar. But there's no date of birth or any
19 identifying factors on there.

20 Q Okay. And finally, was there also just some loose mail in
21 Willie Mitchell's name recovered from the Valdavia location?

22 A Yes, sir.

23 Q These are collectively marked, Your Honor, as Government
24 Exhibit V-10. And I believe that's all the exhibits from
25 Valdavia Court, Your Honor. Take it back. This is Government

1 Exhibit V-23. More telephones?

2 A Yes, sir.

3 Q Two more telephones. I'm sorry. These are individually
4 marked. V-4 and V-2. So would you have attempted to include
5 these in your analysis, also?

6 A Yes, sir.

7 Q That's all for Valdavia Court, Your Honor, if this is a good
8 time to stop.

9 THE COURT: It is. Members of the jury, we didn't take
10 a recess this afternoon because once I realized that we would
11 indeed need you back with us tomorrow, I thought we'd just go a
12 little long without a recess and then I could excuse you a little
13 bit earlier.

14 So we'll stand in recess. Not real clear yet how long
15 we'll need to conclude the government's presentation tomorrow. I
16 think that Mr. Harding is three-quarters of the way, perhaps,
17 through his direct examination of Detective Benson. And then
18 there will be cross examination by the defense. And apart from
19 some housekeeping matters related to exhibits and the
20 presentation to you of certain stipulations, that will conclude
21 the government's case tomorrow.

22 So I do expect or at least I hope that we can excuse
23 you perhaps by noon or so tomorrow for the day. But in any
24 event, I will not keep you here past 1:00 tomorrow.

25 So we will excuse you no later than 1:00, so we won't

1 have a luncheon recess.

2 Next week, I anticipate from what I've been told, that
3 there will be some evidence presented on behalf of one or more of
4 the defendants. You will remember, as I've instructed you, that
5 in a criminal case the defendants are always presumed innocent.
6 They have no burden to prove their innocence. They have no
7 burden to call any witnesses or to introduce any evidence. But
8 they have the right to do so. And I anticipate that there will
9 be some witnesses called by the defense in this case.

10 So I expect that that's what we'll be doing for the
11 better part of Monday.

12 Tuesday we are off. And then there may well be
13 additional defense evidence on Wednesday of next week. That's
14 the best that I can project for you as to where we're going.

15 I think there continues to be a good chance that we
16 will conclude the case before Thanksgiving, but we've reserved
17 the week after Thanksgiving in the event the case should have to
18 go past Thanksgiving.

19 I can tell you now that I do not plan, if we go that
20 far, I do not plan to have you in on the day before Thanksgiving,
21 that Wednesday. You will remember if you look at your schedule,
22 we're not scheduled to sit that day. And of course we won't be
23 in session on Thanksgiving or the day after Thanksgiving, that
24 Friday.

25 So if we're not able to conclude the case before

1 Thanksgiving, then we'll resume the week immediately after
2 Thanksgiving, December 1st, Thanksgiving being late this year.

3 Again, I emphasize the interest is not in speed,
4 although we certainly want to do everything we can to bring this
5 matter to a conclusion. The interest is in fairness and
6 impartiality.

7 The Court continues to express its appreciation for the
8 scrupulous manner in which you've gone about your
9 responsibilities, and your patience, which has just been
10 immeasurable. And we very much appreciate that.

11 Please leave your note pads on your chairs. Have no
12 discussion about the case or any of the evidence. Avoid any
13 media reports about the case.

14 We'll see you tomorrow morning at 9:30 in the jury
15 room. Jury is excused.

16 (Jury exits the courtroom.)

17 THE COURT: How was my estimate, Mr. Harding?

18 MR. HARDING: Right on, I think, Your Honor.

19 THE COURT: Okay. My hope -- you can step down,
20 Detective Benson. Thank you. It's my hope, and I suspect it's
21 going to be dashed, it's my hope that we can start pretty close
22 to 9:30, if not at 9:30. Then Mr. Harding can conclude his
23 direct by 10. That we can conclude the cross of Agent Benson by
24 no later than 11:30, with a short recess. And then between 11:30
25 and 12, we can take care of these housekeeping matters relating

1 to exhibits, stipulations, and so forth. And that we can have
2 argument on motions between 12:30 and 2:00.

3 I'd appreciate any written arguments that you wish to
4 submit overnight, either by CM/ECF or to e-mail. And I'm sure we
5 won't have any time, but should lightning strike and we actually
6 have some time tomorrow to discuss briefly some jury
7 instructions, I would like to do that as well.

8 But in any event, I can assure counsel that you're
9 going to be out of here by 1:45, 1:50 tomorrow afternoon.

10 We will need the defendants tomorrow but they will,
11 too, will be excused no later than one, than 2:00 tomorrow
12 afternoon.

13 Mr. Harding?

14 MR. HARDING: Judge, you mentioned the possibility of
15 submitting motions. Could I ask that the Court consider the
16 motion that was filed last week on behalf of the government
17 relating to jury instructions also in the context of the Rule 29
18 motions? I think that the issues dealt with there are going to
19 be relevant in the Rule 29 motions.

20 THE COURT: I agree. And, of course, there will be
21 some discussion about instructions in connection with Rule 29
22 motions. And the more of that we can do the better. I will say,
23 Mr. Harding, I've quickly reviewed the government's memorandum.
24 And I thank you for it, very well done. But I'm hard pressed, in
25 all honesty, and I'll be glad to hear from you tomorrow on this,

1 if we have time, and I think we will, on why the Court shouldn't
2 give a multiple conspiracy instruction here. I'll be ready to
3 focus tomorrow. I haven't been as focused as I hope to be. But
4 it seems to me that the defendants have generated, even during
5 the defense, during the government's case, plausible bases for a
6 multiple conspiracy instruction. But I'll hear you fully on
7 that.

8 MR. HARDING: Thank you, Your Honor.

9 THE COURT: All right. Mr. Lawlor.

10 MR. LAWLOR: Your Honor, may I request that we take
11 MJOA out of order for the candid reason --

12 THE COURT: You mean out of order in terms of the --

13 MR. LAWLOR: Yes, like motions.

14 THE COURT: Sure. Of course, of course.

15 MR. LAWLOR: And the reason is, candidly, is some of my
16 learned counsel colleagues are more versed on some of the RICO
17 stuff.

18 THE COURT: Absolutely.

19 MR. LAWLOR: May leave my motion to be "me, too."

20 THE COURT: No. No. Remember, I think it's been
21 pretty clear that my order of things really is limited to when
22 we're in front of the jury. And I have no problem --

23 MR. LAWLOR: Yeah. I just want to make sure.

24 THE COURT: Sure. Sure. Thank you, Mr. Lawlor.

25 MR. MARTIN: Your Honor, I may be a couple minutes late

1 tomorrow but Mr. Flannery will be here.

2 THE COURT: All right.

3 MS. RHODES: Your Honor, I just want to clarify what
4 the situation is with Coach Lynch because I've been out of the
5 courtroom the couple times it's recently come up.

6 THE COURT: Let me be clear. I think I can clarify it
7 for you. I have ruled that you may not call Coach Lynch. You
8 have submitted an ex parte request to file your proffer under
9 seal. You earlier mentioned that you had shared it with the
10 government. And I'm not sure if you shared the whole thing or --

11 MS. RHODES: Yes, I did.

12 THE COURT: You did. So do you want to withdraw that
13 request for ex parte filing?

14 MS. RHODES: Sure, sure.

15 THE COURT: Okay. Great. So my position, having
16 quickly reviewed your proffer, and I'm not entirely focused on
17 it, my belief is that the government will be willing to avoid the
18 potential for reversible error, not that it's that, but I think
19 Mr. Harding was very clear five weeks ago that he would, the
20 government would seriously entertain a request for a stipulation
21 relating to all of those historical factual matters about when
22 Mr. Mitchell was away at college, when he was in custody, which
23 is the bulk, as I understand it, of what Coach Lynch had to say.

24 So my point is, I think if you really want to preserve
25 your issue, and I think you have, but if you really want to

1 preserve it, you need to be able to say to the Court in response
2 to my ruling, why any stipulation that the government has
3 indicated it's willing to enter into with you is not sufficient.

4 MS. RHODES: Well, I'm prepared to do that right now
5 because I have spoken to Mr. Harding about it.

6 THE COURT: We'll do it tomorrow.

7 MS. RHODES: Okay.

8 THE COURT: We'll do it tomorrow. So I assume that the
9 government has said yes, we'll stipulate to this, this, and this,
10 and perhaps not that?

11 MS. RHODES: Right.

12 THE COURT: Okay. So I'll hear you tomorrow on what
13 you believe the government is withholding from you that's
14 critical to your presentation. Okay. Mr. Kurland.

15 MR. KURLAND: Your Honor, when everybody is bright,
16 chipper in the morning, and full of coffee, the Court will give
17 the dual sovereignty instruction?

18 THE COURT: Before the jury leaves tomorrow, you will
19 be a very, very happy lawyer, Mr. Kurland.

20 MR. KURLAND: Your Honor, one other thing. In light of
21 some of the issues that came out in my cross examination of
22 Special Agent Klas with respect to the name of the organization,
23 and it came out that there, that the Randallstown/Park Heights
24 organization is in the fourth superseding indictment, just to
25 clarify something. And we were both trying to tiptoe, to stay

1 consistent with the Court's earlier ruling.

2 THE COURT: I think it all came out.

3 MR. KURLAND: But I would like to get in the fact or at
4 least introduce a page out of one of the earlier indictments just
5 as proof that the name actually was in the earlier indictment.

6 THE COURT: I'm not going to admit an indictment. But
7 I am perfectly satisfied, Mr. Kurland, that that issue has now
8 been fully aired in front of the jury. And if in closing
9 argument Mr. Gardner wants to argue to the jury that the
10 government doesn't know what it's dealing with because sometimes
11 it calls it this, sometimes it calls it that, it permits
12 individual agents to name it, you can go there.

13 MR. KURLAND: Thank you, Judge.

14 THE COURT: Thank you all very much. We're in recess.

15 (Conclusion of Proceedings at 4:34 p.m.)
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REPORTER'S CERTIFICATE

I, Mary M. Zajac, do hereby certify that I recorded stenographically the proceedings in the matter of USA v. Willie Mitchell, et al., Case Number(s) AMD-04-029, on November 6, 2008.

I further certify that the foregoing pages constitute the official transcript of proceedings as transcribed by me to the within matter in a complete and accurate manner.

In Witness Whereof, I have hereunto affixed my signature this ____ day of _____, 2009.

Mary M. Zajac,
Official Court Reporter

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